IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FRED A. ROSEN, et al., Plaintiffs,	§	
v.	§	C.A. No. H-01-3624 and consolidated cases
ANDREW S. FASTOW, et al., Defendants	§	

DEFENDANT ARTHUR ANDERSEN LLP'S
MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFFS' MOTION TO REMAND.

Defendant Arthur Andersen LLP ("Andersen") respectfully submits this memorandum of law in opposition to Plaintiffs' Motion to Remand.

A. INTRODUCTION

This action is a one of at least seven lawsuits brought by the law firm of Fleming & Associates, L.L.P. ("the Fleming firm") on behalf of shareholders of Enron Corporation who allege certain defendants defrauded them.[1] Andersen removed this action from state court because the claims in it have been preempted and made removable by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). Plaintiffs' motion to remand relies on a single argument as to why this case should not be adjudicated in this Court; namely, that it is not a "covered class action" as defined in SLUSA because it

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[1] This Court has already recognized five such suits. See Newby v. Enron Corp., No. 01-CV-3624, mem. op. at 2 (S.D. Tex., Feb. 15, 2002) (hereafter "Fleming Firm Order") ("The Jose case represents the fifth in a series of lawsuits filed by Fleming & Associates, L.L.P. on behalf of shareholders of Enron Corporation who allege defendants defrauded them."). The Fleming firm has filed at least two other cases on behalf of Enron shareholders that this Court has yet to mention. See Delgado v. Fastow, et al., Cause No. 2002-00569, Harris Co., Texas (not described in Fleming Firm Order) (attached as Exhibit 4); Pearson v.Fastow, et al., Cause No. 2002-00609, Harris Co., Texas (same) (attached as Exhibit 5).

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is brought on behalf of fewer than 50 persons. As an initial matter, plaintiffs' argument runs counter to its own pleadings and is inconsistent with the plain language of SLUSA.

Moreover, even if this action were brought on behalf of fewer than 50 persons, this court should still deny plaintiffs' motion. This suit is part and parcel of a broad scheme orchestrated and controlled by plaintiffs' attorneys to file a series of actions, each on behalf of fewer than 50 persons but collectively on behalf of hundreds (or possibly thousands) of persons to avoid preemption and removal under SLUSA. See Fleming Firm Order at 4 ("The inevitable inference" of the Fleming firm's collection of plaintiffs in groups less than 50 "is that [it] thereby hopes to avoid the prohibitions of SLUSA"). Each of the Fleming firm's lawsuits "recites essentially the same facts giving rise to essentially the same claims against essentially the same defendants." See Fleming Firm Order at 5; see also exhibits 4 & 5. This attempt to evade SLUSA's removal provisions is contrary to Congress's clear intent, is extremely wasteful and duplicative of counsel and judicial resources, and if permitted to succeed would undermine SLUSA.

B. PROCEDURAL BACKGROUND AND PLAINTIFFS' ALLEGATIONS

Plaintiffs Fred and Marian Rosen initiated this action in the 333rd Judicial District of the District Court of Harris County, Texas on or about November 7, 2001, asserting derivative claims on behalf of Enron against defendants other than Andersen. On December 2, 2001, Enron filed a voluntary petition in bankruptcy and a stay was entered in this Court on December 13, 2001. On or about January 16, 2002, plaintiffs filed this action against Andersen and others by filing a First Amended Petition and Application for a Temporary Restraining Order and Temporary Injunction (the "Petition") in the Harris County court.[2]

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[2]In light of the stay imposed by 11 U.S.C. § 362(a)(3), plaintiffs' amendment of the complaint is null and void. The derivative claims originally asserted in the Petition (continued...)

Andersen filed a Notice of Removal in this Court on January 18, 2002, and plaintiff filed the instant motion to remand on January 30, 2002.

Plaintiffs allege five counts against Andersen, all ostensibly brought under Texas common law or Texas state statutes. (Pet., ¶¶ 116-149.) Although plaintiffs' claims facially sound in common law fraud, negligence, conspiracy and violations of the Texas Business and Commerce Code, they rest on allegations that Andersen misrepresented material facts in connection with the purchase of Enron stock. See Pet. ¶ 62 ("Plaintiffs suffered injury through their purchase of Enron's securities at artificially inflated prices"); id. (Defendants were "participant[s] in a fraudulent scheme . . . by disseminating materially false and misleading statements . . . [which] caused Plaintiffs to purchase Enron's common stock at artificially inflated prices. . . ."); see also 15 U.S.C. § 78bb(f)(1)(a). Plaintiffs also allege that Enron stock "was traded on the New York Stock Exchange." Pet. ¶ 57.

C. ARGUMENT

In 1995, Congress passed the Private Securities Litigation Reform Act (the "Reform Act") to provide uniform standards for class actions (or their equivalent) alleging violations of the federal securities laws. Among other things, the Reform Act imposed heightened pleading requirements in securities fraud actions. Seeking to avoid this new hurdle, as well as other features of the Reform Act, plaintiffs in securities class actions brought suit in state courts. Because Congress perceived that suits being brought in state court often involved federal securities claims in the guise of state law claims, Congress in 1998 moved to close this loophole by enacting SLUSA. See SLUSA, Pub. L. No. 105-353, § 2, 112 Stat. 3227 (1998)

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[2](...continued)
are property of Enron's bankruptcy estate, meaning plaintiffs did not have the power or authority to amend, ab initio. See Andersen's Notice of Removal, ¶ 8.

(codified as a note to 15 U.S.C. § 78a); see also Coy v. Arthur Andersen LLP, No. 01-CV-4248, mem. op. at 11 (S.D. Tex., Feb. 6, 2002) ("When . . . plaintiffs began filing in state rather than federal court, asserting claims under state statutory or common law to avoid the PSLRA's stringent procedural pleading hoops, Congress passed SLUSA in order to close the loophole."); Wald v. C.M. Life Ins. Co., No. Civ. 3:00-CV-2520-H, 2001 WL 256179, at *4 (N.D. Tex. Mar. 8, 2001).

SLUSA precludes plaintiffs from maintaining "covered class actions" alleging state law claims for losses suffered due to material misrepresentations made in connection with the purchase or sale of certain securities. 15 U.S.C. § 78bb(f)(1).[3] Significantly, Congress did not leave it to state courts to dismiss these state-law claims; rather, Congress expressly granted defendants access to a federal forum for this purpose, providing that these class actions "shall be removable to the Federal district court for the district in which the action is pending." 15 U.S.C. § 78bb(f)(2).[4]

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[3]This provision states:

> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging –
>
> (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 78bb(f)(1).

[4] In doing so, Congress placed these state-law class actions beyond the ambit of the well-pleaded complaint rule relied on by plaintiffs. See, e.g., Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 494 (1983). Indeed, one of the requirements

(continued...)

> In particular, a suit is removable under SLUSA if
>
> (1) the action is a "covered class action" under SLUSA; (2) . . . the causes of action on their face are based on state statutory or common law; (3) . . . it involves a "covered security" under SLUSA; (4) . . . it alleges Defendants have misrepresented or omitted material facts; and (5) . . . the alleged misstatement or omission was made "in connection with" the purchase or sale of the covered security.

Coy v. Arthur Andersen LLP, No. 01-CV-4248, mem. op. at 14 (S.D. Tex., Feb. 6, 2002); see also Hardy v. Merrill Lynch, Pierce, Fenner & Smith, No. 01 Civ. 5973 (NRB), 2001 WL 1524471, at *3 (S.D.N.Y. Nov. 30, 2001); Green v. Ameritrade, Inc., No. 01-1251, 2002 WL 126170, at *4 (8th Cir. Feb. 1, 2002).

There is no dispute that the four latter requirements are satisfied here. The claims are all brought under Texas statutes or the common law. See Pet. ¶¶ 116-149. The Petition alleges that Enron stock "was traded on the New York Stock Exchange," Pet. ¶ 57, which makes it a "covered security" under SLUSA. See 15 U.S.C. §§ 78bb(f)(5)(E), 77r(b)(1)(A). The Petition further alleges that the defendants "participa[ted] in a fraudulent scheme . . . by disseminating materially false and misleading statements" which, inter alia, "caused Plaintiffs' to purchase Enron's common stock at artificially inflated prices." Pet. ¶ 62.

Plaintiffs' sole contention is that this case is not a "covered class action" because this action does not meet the "50 person or prospective class member" threshold. See 15 U.S.C. § 78bb(f)(5)(B)(i)(I). Specifically, plaintiffs argue that the Houston Federation of Teachers ("HFT") is both a "corporation" and

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[4](...continued)
for removal under SLUSA is that the action be "based upon the statutory or common law of any State." 15 U.S.C. § 77bb(f)(1) (emphasis added). Thus, like the artful pleading doctrine, see Terrebonne Homecare, Inc. v. SMA Health Plan, Inc., 271 F.3d 186, 188 (5th Cir. 2001), SLUSA does not allow a plaintiff to avoid removal simply by cloaking federal claims in state law.

a "pension plan" and, pursuant to the counting rule applicable under SLUSA, should be counted as only one "person." See 15 U.S.C. § 78bb(f)(5)(B)(i)(I); id. § 78bb(f)(5)(D). In light of the plain language of the Petition, however, this argument fails. Plaintiffs' motion to remand should be denied and their claims dismissed.

1. Damages Are Sought on Behalf of More than Fifty Persons

The Petition's caption explicitly names HFT as a claimant "on behalf of its members." See also Pet. ¶ 3 (HFT "files on behalf of its members who are teachers in the State of Texas.") By SLUSA's plain terms, a covered class action exists in any single lawsuit where "damages are sought on behalf of more than 50 persons. . . ," regardless of the number of plaintiffs actually named in the caption. 15 U.S.C. § 78bb(f)(5)(B)(i)(I) (emphasis added.) Because the Petition's description of the capacity in which HFT is suing exactly tracks SLUSA's language, it could not be more clear that this is exactly the kind of suit brought "on behalf of" others that is contemplated by SLUSA.

Plaintiffs do not – and cannot – contend that HFT has 50 or fewer members. Indeed, this Court should take judicial notice that HFT has more than 50 members.[5] This fact is widely reported and is not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy on this question cannot reasonably be questioned. See, e.g., "Teacher Pension Funds Tally Enron Investment Losses," Education Week (Jan 30, 2002) (HFT has 5,700 members) (attached as Exhibit 1); "Andersen attorneys tell judge documents won't be destroyed," Houston Chronicle (Jan. 18, 2002) (HFT has 5,700 members) (attached as Exhibit 2); "Houston's Top Scorer," ABCNEWS.com

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[5] See generally Fed. R. Evid. 201 (courts can take judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

(Jan. 23, 2001) (in story written a year before these events concerning the selection of Dr. Rod Paige as U.S. Secretary of Education, HFT is listed as the Houston school district's largest teacher's union with 6,000 members) (attached as Exhibit 3). Moreover, plaintiffs' failure to take issue with the statement in the removal petition that the unnamed members of Houston Federation of Teachers constitutes "a group clearly totaling more than fifty" is now a judicial admission of this fact. See Wilson v. Republic Iron & Steel Co., 42 S. Ct. 35, 37 (1921) ("But if the plaintiff does not take issue with what is stated in the [removal] petition, he must be taken as assenting to its truth, and the petitioning defendant need not produce any proof to sustain it."). Since HFT is suing "on behalf of" its 5,700 members, this is a covered class action and should not be remanded.

Nonetheless, plaintiffs invoke SLUSA's "counting rule" to argue that HFT and its members on whose behalf it is suing should be collectively counted as only one person because HFT is a "corporation" or "pension plan." The counting rule provides:

> For purposes of this paragraph, a corporation . . . pension plan . . . or other entity shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

15 U.S.C. § 77bb(f)(5)(D). Without doubt, SLUSA's counting rule prohibits counting a corporation, pension plan or other listed entity itself more than once for purposes of determining the existence of a "covered class action." Plaintiffs' argument, however, rests on the premise that the counting rule imposes a much broader requirement; namely, that corporations or pension funds suing on behalf of their members – and not in their own right – should also be counted only once.

Even assuming that HFT is, as plaintiff alleges, a "corporation," however, this broad reading of SLUSA's counting rule is untenable. To begin, it is inconsistent with the plain language of the rule itself,

which speaks only of how to count a "corporation" or "pension fund" itself; that is, the counting rule does nothing more than prohibit counting a corporation or pension plan plaintiff by reference to its shareholders or members, in cases where the corporation or pension plan sues in its own right for its own alleged injury. See 15 U.S.C. § 78bb(f)(5)(D). Plaintiffs' interpretation turns this plain meaning on its head, positing instead that the counting rule should permit avoidance of SLUSA's otherwise applicable removal provisions any time a corporation, pension plan or similar entity is named as a plaintiff, even if that entity brings suit not for itself, but "on behalf of" others. There is no basis, either in the text of SLUSA or in policy considerations, for treating a corporation that sues on behalf of other persons differently from a natural person that sues on behalf of others.

Moreover, plaintiffs' interpretation of the counting rule eviscerates the definition of a "covered class action." If representative claims brought by corporations, pension plans or other entities "on behalf of" their shareholders or members were counted only once, as plaintiffs contend they should be, there would be nothing to stop 30 or 40 or even 50 corporations or pension plans from bringing a single lawsuit, each "on behalf of" hundreds or even thousands of shareholders or members. Such actions would, thereby, avoid the application of SLUSA and would proceed under state law, in state courts, even though SLUSA was designed specifically to ensure that claims that are in substance federal securities class actions are uniformly adjudicated as such by a federal court under applicable federal law. Coy v. Arthur Andersen LLP, No. 01-CV-4248, slip op. at 11 (S.D. Tex., Feb. 6, 2002); Lander v. Hartford Life & Annuity Ins. Co., 251 F.3d 101, 108 (2d Cir. 2001) (SLUSA closed loophole in PSLRA by making "federal court the exclusive venue for class actions alleging fraud in the sale of certain covered securities and by mandating that such class actions would be governed exclusively by federal law); Korsinsky v. Salomon Smith Barney, Inc.,

No. 01-Civ-6085 (SWK), 2002 WL 27775, *3 (S.D.N.Y., January 10, 2002) (same). Plaintiffs' reading of SLUSA's counting rule should therefore be rejected.

Trying desperately to avoid the clear import of the words "on behalf of" in their Petition, plaintiffs further argue that the Court should ignore these words in the Petition and instead look at the Petition's "substance." Pl. Mem. at 7. But analysis of the Petition's substance underscores that HFT is suing "on behalf of its members," not in its own right.

Plaintiffs' contention in their brief that HFT is itself a "pension plan" is unsupportable and frivolous. First, the Petition makes clear that the Texas Retirement System ("TRS"), not HFT, holds the Enron shares at issue. See Pet. ¶ 52 ("TRS held approximately 28 million shares of stock of Enron by the fall of 2001."); see also Tex. Const. Art. 16, § 67(a)(3)(" Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments."). Second, the Petition alleges that HFT's members, not HFT, contribute money to TRS. See Pet. ¶ 3 ("HFT's members have contributed to the [TRS] from their salaries"); id. ¶ 50 ("Contributions are made by employees and also by the State"); id. ¶ 51 ("Plaintiffs' members . . . have regularly contributed to TRS."). Under these circumstances, HFT is not asserting its own claims but is plainly asserting claims "on behalf of" its members. This action is, therefore, a "covered class action" and plaintiffs' motion to remand should be denied.

2. Remanding this Action Would Contravene the Clear Intent of SLUSA

In any event, Court should deny plaintiffs' motion to remand on the ground that plaintiffs' filing in state court was part of a blatant scheme to evade SLUSA's removal provisions. Plaintiffs' counsel represents over 750 clients who seek or will seek recovery related to Enron's financial difficulties from

Andersen and the other defendants. See Fleming Firm Order at 3. Each of the Fleming firm's lawsuits "recites essentially the same facts giving rise to essentially the same claims against essentially the same defendants." See Fleming Firm Order at 5; compare Exs. 4 & 5. This action contains an apparently random grouping of plaintiffs from around the country, including plaintiffs from Tennessee, Kentucky, Mississippi, Wisconsin, Florida, Arizona, and West Virginia–grouped together only at the whim of the Fleming firm. See Pet. ¶¶ 6-14. The sole rational for groupings is to artificially avoid SLUSA. See id. at 4 ("Jez is careful to point out that his suits are not denominated class actions and they do not aggregate 50 or more plaintiffs in any one suit. The inevitable inference is that he thereby hopes to avoid the prohibitions of SLUSA").

The Fleming firm's actions constitute a clear abuse of the SLUSA provision permitting certain small, non-class actions to remain in state court. As this Court has found:

> It is now abundantly clear, contrary to the inferences [the Fleming firm] wished the court to draw from [its] representations on January 30, 2002, that in the absence of an injunction prohibiting Fleming from filing new actions and seeking emergency relief, Fleming will proceed on a county-by-county basis throughout the State of Texas filing actions and seeking the same emergency relief undertaken in the Bullock, Ahlich, and Jose cases.

Fleming Firm Order at 7-8. The federalism concerns that motivated this provision would be seriously undermined by a flood of nearly identical state court actions, inefficiently spread out through courts across the state. Recognizing the inefficiency of having similar cases pending in separate courts, Texas law – as discussed in further detail below – grants defendants a right to consolidate these cases. But there is no reason to believe that, faced with motions to consolidate, the games-playing plaintiffs lawyers who devised this strategy to evade SLUSA would not attempt to defeat that right by strategic dismissals and re-filings of these cases. The resulting litigation would represent an needless burden on the state courts, consuming

state judicial resources; at best, it would result in eventual consolidation and removal to federal court. Either way, Congress did not, in its solicitude for the state judiciary, intend to overwhelm state courts with claims by large numbers of plaintiffs from around the country whose claims are strategically split up and inefficiently spread throughout courts across the state.

To the contrary, SLUSA was adopted to ensure that certain actions that are, in substance, federal securities law claims are not brought in state court, under state law, to avoid the application of the Reform Act. Fleming Firm Order at 4; Coy v. Arthur Andersen LLP, No. 01-CV-4248, slip op. at 11 (S.D. Tex., Feb. 6, 2002); Lander, 251 F.3d at 108. Further, "[a]ccording to Congress, [SLUSA] should be interpreted broadly to reach mass actions and all other procedural devices that might be used to circumvent the class definition." Bertram v. Terayon Communications Systems, Inc., No. 00-CV-12653 (SVW), 2001 WL 514358 (C.D. Cal., March 27, 2001) (holding that plaintiff could not avoid SLUSA simply by seeking equitable relief as opposed to damages) (emphasis added) (citation omitted.)

The scheme devised by plaintiffs' counsel attempts to evade not only the Reform Act but SLUSA itself, and plainly contravenes the purpose behind the statute's enactment. Just as "artful pleading" will not allow a plaintiff to defeat removal, see, e.g., Terrebonne Homecare, Inc. v. SMA Health Plan, Inc., 271 F.3d 186 (5th Cir. 2001); Aaron v. National Union Fire Ins. Co., 876 F.2d 1157, 1160-62 (5th Cir. 1989), "artful filing" of the kind engaged in here should not permit avoidance of Congress's clear intention to preempt all claims covered by SLUSA. As one court has held, "[a] rule that allows a plaintiff to defeat a defendant's right to remove a class action through such a hollow procedural maneuver would surrender [SLUSA's] application to the class action plaintiffs the statute seeks to keep at bay." Gibson v. PS Group Holdings, Inc., No. 00-CV-0372, 2000 WL 777818, *4 (S.D. Cal., June 14, 2000) (finding plaintiff's

intentional removal of a prayer for damages in an attempt to avoid SLUSA was ineffectual, but remanding on other grounds). "Clearly SLUSA was enacted to prevent just such gamesmanship ...." See Fleming Firm Order at 4.

Plaintiffs might counter by arguing that, for better or for worse, they are merely exploiting loopholes in SLUSA. But statutory interpretation is not blind to the distinction between invoking an exception and abusing it, and SLUSA can be read to authorize removal under these circumstances. In particular, the group of lawsuits brought by plaintiffs' counsel should not be naively viewed as proceeding separately. Rather these coordinated lawsuits, which collectively seek damages on behalf of more than 50 people, must be seen as "proceed[ing] as a single action." 15 U.S.C. s 78bb(f)(5)(B)(ii).

3. The Fleming Firm's Cases are "Pending in the Same Court"

Moreover, as mentioned above, defendants have a right under Texas law to consolidate all of these actions before a single state court judge. See Tex. R. Jud. Admin. 11.4(h). This rule provides that on a motion for consolidation:

> The presiding judge must grant the motion or request if the judge determines that: (1) the case involves material questions of fact and law common to a case in another court and county; and (2) assignment of a pretrial judge would promote the just and efficient conduct of the cases. Otherwise, the presiding judge must deny the motion or request.

Moreover, a refusal to grant a consolidation motion is subject to mandamus review by the Texas Supreme Court. See Tex. R. Jud. Admin. 11.5.[6] Accordingly, the actions subject to this right of consolidation are,

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[6]The use of the term "must," accompanied by the express availability of mandamus, makes it clear that a determination under this Rule is not discretionary. Therefore, 15 U.S.C. § 78bb(f)(5)(B) is not implicated here.

for all practical purposes, "pending in the same court" under SLUSA.[7] Any ruling otherwise would require defendants to go through the empty formality of consolidating the cases in state court, delaying the removal mandated by Congress and thereby facilitating plaintiffs' manipulation of SLUSA. This can be avoided by recognizing that "pending in the same court" encompasses actions that the defendant has a right under State law to consolidate in the same court. This reading of SLUSA avoids needlessly forcing the defendants to go through the empty formality of consolidating these actions which they have a right to consolidate under Texas law.

D. CONCLUSION

For the foregoing reasons, Defendant Arthur Andersen LLP respectfully requests that plaintiffs' motion to remand this action to Texas state court be denied, and such other relief as this Court may deem just and proper.

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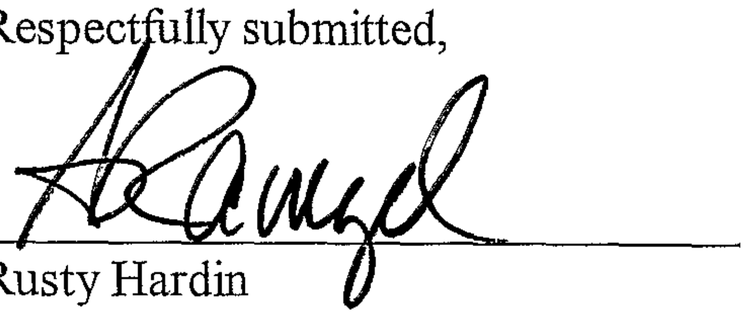
[7]This case would have been consolidated with other Enron-related cases pending in Harris and surrounding counties in the Second Administrative Judicial Region of Texas. See Tex. Gov't Code § 74.042(c) ("The Second Administrative Judicial Region is composed of the counties of Angelina, Bastrop, Brazoria, Brazos, Burleson, Chambers, Fort Bend, Freestone, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Montgomery, Newton, Orange, Polk, Robertson, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, Washington, and Wharton.").

Dated: Houston, Texas
February 19, 2002

Respectfully submitted,



Rusty Hardin
State Bar No. 08972800
S.D. Tex. I.D. No. 19424

Attorney-in-Charge for
Defendant Arthur Andersen, L.L.P.

OF COUNSEL
Andrew Ramzel
State Bar No. 00784814
S.D. Tex. I.D. No. 18269
RUSTY HARDIN & ASSOCIATES, P.C.
1201 Louisiana, Suite 3300
Houston, Texas 77002
(713) 652-9000
(713) 652-9800 (fax)

Michael Carroll
Daniel Kolb
Sharon Katz
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
(212) 450-4000
(212) 450-3633 facsimile

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2002, the foregoing pleading was served on the following counsel of record by certified mail, return receipt requested:

Mr. G. Sean Jez
Fleming & Associates, L.L.P.
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019

Mr. William Lerach
Milberg Weiss Bershad Hynes & Lerach, L.L.P.
401 B Street, Suite 1700
San Diego, CA 921010-4297

and was served on defense counsel by e-mail and/or by first class mail.

Andrew Ramzel

EXHIBIT 1

Education Week

American Education's Newspaper of Record

January 30, 2002

News in Brief: A National Roundup

Education Week

Teacher Pension Funds Tally Enron Investment Losses

A state district court judge in Texas, responding to a request by the Houston Federation of Teachers and others, has ordered the accounting firm Arthur Andersen, the auditor for the embattled Enron Corp., not to destroy any more documents.

A state district court judge in Texas, responding to a request by the Houston Federation of Teachers and others, has ordered the accounting firm Arthur Andersen, the auditor for the embattled Enron Corp., not to destroy any more documents.

The 5,700-member federation, whose members' pension fund had invested in Enron stock, joined a lawsuit filed in November by employees and stockholders of the bankrupt Houston-based company who are seeking to recoup their losses. Judge Caroline Baker granted the order Jan. 18.

Arthur Andersen has come under fire for having its employees shred Enron-related documents shortly before the energy-trading company's financial collapse and for accounting practices that apparently helped mask Enron's true condition.

Teachers in Texas pay into a pension fund at the Teacher Retirement System, which then invests the money. The retirement system has lost $35.7 million on its Enron investments since 1994. But system spokesman Howard Goldman said that represented less than four-hundredths of 1 percent of the $80 billion pension fund. The losses, he said, "had no material effect" on the fund's value.

Enron's failure has rippled into education retirement funds in other states as well. Pennsylvania's state pension fund for retired school employees lost at least $30 million in Enron stock, *The Philadelphia Inquirer* reported. New Jersey's fund lost $60 million, according to the newspaper.

In most cases, fund managers have said that the losses would have no effect on employees, because pensions are guaranteed or because other investments have made up for the Enron losses.

—Catherine Gewertz

EXHIBIT 2

HoustonChronicle.com

HoustonChronicle.com -- http://www.HoustonChronicle.com | Section: Business

Jan. 17, 2002, 8:56PM

Andersen attorneys tell judge documents won't be destroyed

By JO ANN ZUNIGA

Attorneys for auditor Arthur Andersen reassured a Houston judge Thursday that it will destroy no more documents relating to Enron's financial collapse, the first such declaration in open court.

In a hearing before state District Judge Caroline Baker, attorney Rusty Hardin said he would not enter the statement as an official agreement, because he believes that federal courts have jurisdiction.

George Fleming, representing members of the Houston Federation of Teachers and other investors in Enron stock, filed an amended lawsuit Wednesday requesting a restraining order to stop any further document tampering as well as to prevent any further payouts to Enron executives except for the normal course of business.

Hardin and co-counsel Andy Ramzel argued against any further action, saying the matter belongs in federal bankruptcy court, where Enron's case is pending.

Fleming argued that in the amended suit, only individual investors are suing Andersen and individual Enron executives -- not the company itself -- on state issues of civil conspiracy and fraud.

The lawsuit stated, "Each of the defendants is liable as a participant in a fraudulent scheme ... by disseminating materially false and misleading statements as well as internal audits and significant consulting services, a clear conflict of interest, and/or concealing material adverse facts."

Fleming told Baker, "Arthur Andersen did not file bankruptcy. This is a separate proceeding."

Ramzel argued, "This is a derivative action whether they attempted to remove Enron's name in black and white.

"This not a normal case. I cannot delete your name off a car title and put someone else's name on the title, because it's still your car."

Attorney Melanie Gray, representing Enron, said, "This issue is critically important. We must zealously protect the debtor's (Enron's) right to control its own assets."

But Fleming's co-counsel Anne Ferazzi pointed out, "Arthur Andersen is a nondebtor third party and is not entitled to (Enron's) bankruptcy protection."

Baker asked attorneys to expand a list of case citings for her to examine and will reconvene the hearing at 4 p.m. today.

The HFT does not make direct investments for its 5,700 members. Teachers in Texas pay into the Teacher Retirement System, and the money goes into a pension fund and is invested. The lawsuit said the TRS held 2.8 million shares of Enron stock in the fall.

The TRS bought $9 million worth of Enron stock three weeks before the energy corporation filed bankruptcy.

They and other stockholder plaintiffs are seeking to recoup their losses.

Jesse Jones High School teacher Annie Banks, HFT board vice president, sat in on the court hearing Thursday.

In her 60s and expected to retire next year, Banks said, "I've put in 38 years (in the pension plan). I would lose a lot."

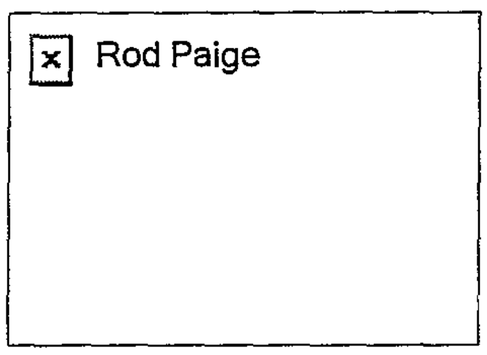
Banks estimated she pays in $600 a month to her retirement fund.

"Other teachers are in a panic," she said. "I'm feeling stressed, angry. I'm very disgusted that someone can just go in and take my life savings and do what they want."

HoustonChronicle.com -- http://www.HoustonChronicle.com | Section: Business
This article is: http://www.chron.com/cs/CDA/story.hts/metropolitan/1216527

EXHIBIT 3

January 23, 2001


Rod Paige

Houston Superintendent of Schools Rod Paige talks to reporters about his nomination by President-elect George W. Bush, right, to be secretary of education. (Michael DiBari/AP Photo)

Houston's Top Scorer

Lowering Barriers Between Public and Private

abcNEWS.com

Rod Paige, the president-elect's choice for education secretary, is widely credited with turning Houston's troubled school district into a national role model for struggling urban districts by making it safer, raising test scores, decreasing dropout rates and convincing warring factions of the community to get along in the interest of education.

Houston Independent School District, the nation's seventh largest, with its 212,000 students and $1.3 billion budget still has a long way to go, "but there've been major steps forward under Rod's leadership," says Bob Lanier, former Houston mayor, a Democrat who is a close friend of Paige's. "He has practical common sense. He's not divisive by nature and he brings to the job the kind of centrist leadership George W. Bush ran on. He avoids extremes."

Paige, 67, has been a long-time friend and advisor to Bush. He visited six state delegations prior to the Republican Convention to tout Bush's education record and served as an education advisor during the campaign. During his tenure as superintendent, Paige implemented an accountability system for school principals that closely mirrors Bush's own education philosophy of measuring educators' performance.

Rod Paige: Secretary of Education

Age: 67 **Place of birth:** Brookhaven, Miss.

Education: Jackson State University B.S., 1955; Indiana University, M.S. 1964, Ph.D. in physical education 1969

Career highlights: Jackson State University, head football coach, 1962-1969; Texas Southern University, athletic director, head football coach, assistant professor, dean of the College of Education, 1971 - ; Houston Independent School District, superintendent, 1994-

Best known for: Turning around the Houston Independent School District around

Family: Divorced, one son

Winning Over His Opponents

Friends and colleagues say Paige is unlikely to shy away from controversial issues and is well-suited to bridge ideological divides in Washington. In Houston he enjoys the

support of a majority of the school board, which had been divided along racial and ideological lines for years, as well as the teachers' union and the business community.

In a city where school board members are elected as individuals and not by membership in political party, Paige is known for his ability to build consensus, his bipartisan nature, and for swiftly taking care of the nuts and bolts to get things done.

"He's a nice person. He has integrity. He's an honest man. I think he's a little shy sometimes and we have the usual strife and squabbling, but overall he's brought this community together," says Gayle Fallon, president of the Houston Teacher's Federation, the district's largest teachers' union with 6,000 members.

"He also has an amazing memory. I think he remembers almost everything he reads" — a formidable trait in an opponent — something Fallon learned in her many battles with Paige over salary and benefit issues. During his first few months in office she was barely on speaking terms with Paige because, she says, of his somewhat overconfident manner coming in and an initial lack of accessibility. But now he has won her over as he does many of his adversaries, she says.

Houston Achievements

A Mississippi native and the son of public educators, Paige earned a doctorate in physical education from Indiana University in Bloomington, but before heading Houston's schools had never led a public school system before.

In 1989, as the dean of the education school at Texas Southern University, where he had also been football and athletic director, Paige won a seat on the Houston school board. In 1994, the board picked him as superintendent without conducting a national search, raising the ire of Hispanic educators and officials who felt frozen out of the process.

Since then, test scores in Houston's school district have risen 20 percent and the dropout rate decreased by half even as the district's proportion of low-income students increased to 71 percent from 58 percent.

In 1998 Houston voters approved the largest school bond package in Texas history — $678 million — after defeating a smaller proposal for similar improvements two years earlier.

"His ability to inspire people and build a consensus comes from being an educator his whole life, an elected official, serving in a tough urban district and from having been a football coach," says Rodney Ellis, a democratic Texas state senator who has known Paige for more than 25 years.

Being a football coach requires a certain amount of diplomacy when done right, he says.

"A lot of being a coach is the ability to get people to work as a team and go in one direction. The goal is always to win."

Including Business Community

During his tenure, the district has linked principals' contracts to student performance, given principals more autonomy in running their schools, contracted with private businesses to manage most nonacademic services, declared English literacy a goal for all students, and shifted toward phonics-based reading instruction — an approach that some have criticized.

With the backing of the school board, he contracted out the management of school maintenance, food services, and the district's $65 million employee-benefits program. The board also hired an outside company to operate alternative schools for hundreds of students with discipline problems.

Paige's achievements have caused colleagues everywhere to take notice: Last October the Council of the Great City Schools named him the most outstanding urban educator in the country.

"He managed to save the district some money, but he also just made things a lot more efficient," says Robert Mosbacher, chair of the Education and Workforce Advisory Committee of the Greater Houston Partnership, an advocacy group for the city's business community.

"Usually the business community is shut out of the education debate, but Rod has included us in the dialog. He believes that we need to make public education the education of choice so that wanting to escape to private schools is no longer an issue. He wants Houston Independent School District to be the school system of choice for people regardless of how much money they have."

On a national level Paige is likely to continue bringing private and public initiatives together, says Mosbacher. "He'll leave the office of secretary of education better than he found it as he has Houston Independent School District." ■

EXHIBIT 4

ORIGINAL

Cause No. 2002-00569

RUBEN and IRENE DELGADO, Plaintiffs, v. ANDREW S. FASTOW, KENNETH L. LAY, JEFFREY J. SKILLING, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RICHARD B. BUY, RICHARD CAUSEY, RONNIE C. CHAN, JOHN H. DUNCAN, JOE H. FOY, WENDY L. GRAMM, KEN L. HARRISON, ROBERT K. JAEDICKE, MICHAEL J. KOPPER, CHARLES A. LEMAISTRE, REBECCA MARK-JUSBASCHE, JOHN MENDELSOHN, JEROME J. MEYER, PAUL V. FERRAZ PEREIRA, FRANK SAVAGE, JOHN A. URQUHART, JOHN WAKEHAM, CHARLES E. WALKER, BRUCE WILLISON, HERBERT S. WINOKUR, JR., BEN GLISAN, KRISTINA MORDAUNT, D. STEPHEN GODDARD, JR., DAVID DUNCAN, and ARTHUR ANDERSEN, L.L.P. Defendants.	§ §	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS ENTERED VERIFIED 55 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COMES NOW Plaintiffs Ruben and Irene Delgado, and file this their Original Petition complaining of Defendants Andrew S. Fastow, Kenneth L. Lay, Jeffrey J. Skilling, Robert A. Belfer, Norman P. Blake, Jr., Richard B. Buy, Richard Causey, Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Ken L. Harrison, Robert K. Jaedicke, Michael J. Kopper, Charles A. Lemaistre, Rebecca Mark-Jusbasche, John Mendelsohn, Jerome J. Meyer, Paul V. Ferraz Pereira, Frank Savage, John A. Urquhart, John Wakeham, Charles E. Walker, Bruce Willison, Herbert S. Winokur, Jr., Ben Glisan, Kristina Mordaunt, D. Stephen Goddard,

Jr., David Duncan, and Arthur Andersen, L.L.P. In support thereof, they would show the following:

I. Discovery

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiffs Ruben and Irene Delgado are citizens of the State of Texas who own Enron common stock.

3. Defendant **Robert A. Belfer** ("Belfer") has served as a Director of Enron since 1983, serving on its Executive Committee and Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Belfer is an individual residing in New York, New York who may be served with citation by serving him at 927 5th Ave, New York, New York 10021-2650.

4. Defendant **Norman P. Blake, Jr.** ("Blake") has served as a Director of Enron since 1993, serving on the Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Blake is an individual residing in Colorado Springs, Colorado.

5. Defendant **Richard B. Buy** ("Buy") is the Executive Vice President and Chief Risk Officer of Enron and has been Senior Vice President and Chief Risk Officer. Buy is an individual residing in Houston, Harris County, Texas who may be served with citation by serving him at 246 S. Post Oak Lane, Houston, Texas 77056-1056.

6. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron. Causey is an individual residing in Spring, Montgomery

County, Texas who may be served with citation by serving him at 39 N. Regent Oak, Spring, Texas 77381-6442.

7. Defendant **Ronnie C. Chan** ("Chan") has been an Enron director since 1996. Chan has been Chairman of Hang Lung Group, comprising three publicly traded Hong Kong-based companies involved in property development, property investment and hotels. Mr. Chan also co-founded and is a director of various companies within Morningside/Springfield Group, which invests in and manages private companies in the manufacturing and service businesses, and engages in financial investments. Mr. Chan is also a director of Standard Chartered PLC and Motorola, Inc. Defendant Chan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

8. Defendant **John H. Duncan** ("Duncan") has been an Enron director since 1985. Duncan's principal occupation has been investments since 1990. Mr. Duncan is also a director of EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.) and Group I Automotive Inc. Defendant Duncan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

9. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer. Defendant Fastow may be served with citation at 1831 Wroxton, Houston, Texas 77005.

10. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997-1999. Foy is an individual residing in Kerrville, Kerr County, Texas who may be served with citation by serving him at 404 Highridge Drive, Kerrville, Texas 78028-6048.

11. Defendant **Wendy L. Gramm** ("Gramm") has been an Enron director since 1993. Gramm is an economist and Director of the Regulatory Studies Program of the Mercatus Center of George Mason University. From February 1988 until January 1993, Dr. Gramm served as Chairman of the Commodity Futures Trading Commission in Washington, D.C., Dr. Gramm is also a director of IBP, Inc., State Farm Insurance Co. and Invesco Funds. Dr. Gramm was also a director of the Chicago Mercantile Exchange until December 31, 1999. Defendant Gramm may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

12. Defendant **Ken L. Harrison** ("Harrison") served as a Director for Enron from 1997-2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon.

13. Defendant **Robert K. Jaedicke** ("Jaedicke") has been an Enron director since 1985. Jaedicke is Professor (Emeritus) of Accounting at the Stanford University Graduate School of Business in Stanford, California. He has been on the Stanford University faculty since 1961 and served as Dean from 1983 until 1990. Dr. Jaedicke is a director of California Water Service Company and Boise Cascade Corporation and he plans to retire from the Boise Cascade Corporation board in April 2001. Dr. Jaedicke was also a director of GenCorp, Inc. until July 2000. Defendant Jaedicke may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Defendant

Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

14. Defendant **Michael J. Kopper** ("Kopper") served as managing director of Enron's Global Equity Markets Group. Kopper is an individual residing in Spring, Montgomery County, Texas who may be served with citation by serving him at 2138 Bolsover Street, Houston, Texas 77005-1618.

15. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985. Lay has been Chairman of the Board of Enron since 1986. From 1986 until February 2001, Mr. Lay was also the Chief Executive Officer of Enron. On August 14, 2001, Lay became President and CEO of Enron upon the surprise resignation of defendant Skilling, as further described below. Mr. Lay is also a director of Eli Lilly and Company, Compaq Computer Corporation, EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.), i2 Technologies, Inc. and NewPower Holdings, Inc. Defendant Lay may be served with citation at his principal place of business, 1400 Smith Street, Houston, Texas 77002.

16. Defendant **Charles A. LeMaistre** ("LeMaistre") has been an Enron director since 1985. LeMaistre served as President of the University of Texas M.D. Anderson Cancer Center in Houston, Texas and now holds the position of President Emeritus. LeMaistre is an individual residing in San Antonio, Bexar County, Texas who may be served with citation by serving him at 7 Bristol Grn., San Antonio, Texas 78209-1846.

17. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999-2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-Jusbasche is an individual residing in Houston, Harris County, Texas.

18. Defendant **John Mendelsohn** ("Mendelsohn") has been an Enron director since 1999. Mendelsohn has served as President of the University of Texas M.D. Anderson Cancer Center. Prior to 1996, Dr. Mendelsohn was Chairman of the Department of Medicine at Memorial Sloan-Kettering Cancer in New York, Dr. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas who may be served with citation by serving him at 1417 South Blvd., Houston, Texas 77006-6333.

19. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997-2001, serving on the Finance Committee and Nominating Committee. Meyer executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Meyer is an individual residing in Wisonville, Oregon.

20. Defendant **Lou Pai** ("Pai") has been an Enron director at all times relevant to this lawsuit. Pai is also the Chairman and CEO of Enron Xcelerator and Chairman of Enron Energy Services. Pai may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to his principal place of business, 1400 Smith Street, Houston, Texas 77002.

21. Defendant **Paul V. Ferraz Pereira** ("Pereira") has been an Enron director since 1999. Pereira is Executive Vice President of Group Bozano. Mr. Pereira served for over five years as President and Chief Operating Officer of Meridional Financial Group and Managing Director of Group Bozano. Mr. Pereira is also the former President and Chief Executive Officer of the State Bank of Rio de Janeiro. Defendant Pereira may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

22. Defendant **Frank Savage** ("Savage") has been an Enron director since 1999. Savage has served as Chairman of Alliance Capital Management International (a division of Alliance Capital Management, L.P.). Mr. Savage is also a director of Lockheed Martin Corporation, Alliance Capital Management L.P. and Qualcomm Corp. Savage is an individual residing in Stamford, Connecticut who may be served with citation by serving him at 87 Ridgecrest Road, Stamford, Connecticut 06903-3120.

23. Defendant **Jeffrey K. Skilling** ("Skilling") has been an Enron director at all times relevant to this lawsuit. Mr. Skilling served as President and Chief Executive Officer of Enron from February 2001 through August 14, 2001, when he announced his unexpected resignation from the offices of both President and CEO. It was also announced on that date that Skilling would remain on the Board of Directors, and that he would serve as a consultant to the Company through the year 2005. Mr. Skilling served as President and Chief Operating Officer of Enron from January 1997 through February 2001. From August 1990 until December 1996, he served as Chairman and Chief Executive Officer of Enron North America Corp. and its predecessor companies. Mr. Skilling is also a director of the Houston Branch of the Federal Reserve Bank of Dallas. Defendant Skilling may be served with citation at 10 Briarwood Court, Houston, Texas 77019-5802.

24. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990-2001, serving on the Finance Committee. Urquhart executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Urquhart is an individual residing in Fairfield, Connecticut who may be served with citation by serving him at 7 Sasco Pt. Fairfield, Connecticut 06430.

25. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995-1998, serving on the Finance Committee and Nominating Committee, including as

Chairman. Walker executed the 1997 and 1998 financial statements of Enron. Walker is an individual residing in Potomac, Maryland who may be served with citation by serving him at 10120 Chapel Road, Potomac, Maryland 20854-4143.

26. Defendant **John Wakeham** ("Wakeham") has been an Enron director since 1994. Wakeham is a retired former U.K. Secretary of State for Energy and Leader of the Houses of Commons and Lords. He served as a Member of Parliament from 1974 until his retirement from the House of Commons in April 1992. Prior to his government service, Lord Wakeham managed a large private practice as a chartered accountant. He is currently Chairman of the Press Complaints Commission in the U.K. and chairman of director of a number of publicly traded U.K. companies. Defendant Wakeham may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

27. Defendant **Bruce G. Willison** ("Willison") served as a member of the Audit Committee in 1997. Willison is individual residing in Los Angeles, California who may be served with citation by serving him at 162 S. Burlingame Ave, Los Angeles, California 90049-2642.

28. Defendant **Herbert S. Winokur** ("Winokur") has been an Enron director since 1985. Winokur is Chairman and Chief Executive Officer of Capricorn Holdings, Inc. (a private investment company) and Managing General Partner of Capricorn Investors, L.P., Capricorn Investors II, L.P. and Capricorn Investors III, L.P., partnerships concentrating on investments in restructure situations, organized by Mr. Winokur in 1987, 1994 and 1999, respectively. From August 2000 until March 2001, Mr. Winokur served as Non-executive Chairman of Azurix Corp.

Prior to his current appointment, Mr. Winokur was Senior Executive Vice President and a director of Penn Central Corporation. He is also a director of NATCO Group, Inc., Mrs. Fields' Holding Company, Inc., CCC Information Services Group, Inc. and DynCorp. Winokur is an individual residing in Greenwich, Connecticut who may be served with citation by serving him at 341 North Street, Greenwich, Connecticut 06830-3901.

29. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001. Defendant Glisan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to 15322 Baybrook Drive, Houston, Texas 77062. This Defendant was discharged for self-dealing the week of November 5, 2001.

30. Defendant **Kristina Mordaunt** ("Mordaunt") was a managing director and general counsel of Enron Broadband Services until November of 2001. Defendant Mourdaunt may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to her home address of 4531 West Alabama, Houston, Texas 77027-4803. This Defendant was discharged for self-dealing the week of November 5, 2001.

31. Defendant **D. Stephen Goddard, Jr.** ("Goddard") is the office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. that conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Goddard is an individual residing in Houston, Harris County, Texas who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

32. Defendant **David Duncan** ("Duncan") is a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Duncan is an individual residing in Houston, Harris County, Texas who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

33. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a partnership, whose business address is 901 Main Street, Suite 5600, Dallas, Texas 75202. Defendant Arthur Andersen may be served with process by mailing its registered agent, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to P. Scott Ozanus, 901 Main Street, Suite 5600, Dallas, Texas 75202. Arthur Anderson was the independent auditor for Enron during the relevant portions complained of herein.

34. Collectively, the Defendants identified in paragraphs 3-30 are referred to as the "Enron Defendants." The Enron Defendants, through their positions as directors and/or senior officers of Enron, had responsibility for the management of Enron's business and operations.

35. Collectively, the Defendants identified in paragraphs 31-33 are referred to as the "Andersen Defendants."

36. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in Enron's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers of Enron, by virtue of their high-level positions with Enron, directly participated in the management of Enron, was directly involved in the day-to-day operations of Enron at the highest

levels and was privy to confidential proprietary information concerning Enron and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding Enron, and approved or ratified these statements.

37. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to Enron's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of Enron's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions violated these specific requirements and obligations.

38. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Individual Defendants had access to the adverse undisclosed information about Enron's business prospects and financial condition and performance as particularized herein and knew (or

recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by Enron materially false and misleading.

39. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Enron, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to Enron. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein, and is therefore primarily liable for the representations contained therein.

40. Defendant AALLP was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with state and federal securities statutes. Defendant AALLP's relationship with Enron included being paid to provide both outside audits of Enron's financial statements as well as internal audits, a clear conflict of interest. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives.

41. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on Plaintiffs by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the Plaintiffs and the investing public regarding Enron's business, its finances and the intrinsic value

of Enron's common stock; and (ii) caused Plaintiffs to purchase Enron's common stock at artificially inflated prices and/or continue their ownership of Enron stock in their private investing devices, their 401k plans, their ESOP plans and/or their AESOP plans.

III. Jurisdiction and Venue

42. This Court has jurisdiction over each Defendant because each Defendant is doing business in Harris County, Texas, has committed a tort in whole or in part in Harris County, Texas and/or resides in Harris County. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

43. Venue is proper in Harris County, Texas. Specifically, venue is proper in Harris County, Texas because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Venue is also proper in Harris County, Texas because it is the county of some of the Defendants' residence at the time the cause of action accrued and the county in which the majority of the work on the audits was done.

IV. Just the Facts

44. In 1999, Defendant Fastow formed two investment partnerships, LJM Cayman LP ("LJM") and LJM2 Co-Investment LP ("LJM2"). LJM and LJM2 are private investment companies that, according to Enron's public filings, engage in acquiring and/or investing in primarily energy-related investments. Fastow was the managing member of the general partner of each of the two partnerships.

45. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2") partnership said that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices."

46. Incredibly, the document reportedly goes so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and its stockholders to whom he and the Director Defendants owned a fiduciary duty and states that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices and that *Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow] wealth."* (Emphasis added).

47. Defendants clearly breached their duties by expressly approving the agreement with Mr. Fastow which created a situation of irreconcilable conflict and placed Enron's CFO in the middle of that conflict by putting Fastow, who is responsible for overseeing the financial interests of the company, in charge of partnerships that routinely purchased assets from Enron and was involved in self dealing.

48. Remarkably, Defendant Lay reportedly denied the existence of any conflict of interest arising out of the LJM arrangement. Such related-party transactions, involving top managers or directors, aren't unusual, he said. "Almost all big companies have related-party transactions."

49. Enron has publicly stated that the partnership deals were aimed to help it hedge against fluctuating values for its growing portfolio of assets. In the past decade, Enron has seen its asset base rocket to more than $100 billion. As a result of this rapid growth, Enron has at times been straped for capital and has sought ways to bring in outside investors to help bolster its balance sheet.

50. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection with a $30 million LJM2 investment in a project known as "Raptor III" in September 2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2 approached Enron to settle the investment early, causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit." The information quoted came from an internal report produced by defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside information to recap illicit insider trading profits, in the millions of dollars in this transaction alone.

51. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The Company's cover up of the Fastow agreement and other related transactions has subjected Enron to strong criticism from investors and analysts alike.

52. On October 23, 2001, the Associated Press reported that various partnership transactions purportedly resulted in a gain of $16 million (pretax) in 1999, and a loss of $36 million in 2000. The same article quoted a top analyst as sharply criticizing Enron's

concealment of the partnership deals. "What you are hearing from many is that the company's credibility is being questioned and there is a need for disclosure," said David Fleischer of Goldman, Sachs & Co. "That is exactly what I think needs to happen. There is an appearance that you are hiding something. . . I for one find the disclosure is not complete enough for me to understand." To add fuel to the fire, the Company also acknowledged that the SEC had begun an investigation into Enron's accounting practices with regard to the partnerships.

53. On the basis of the foregoing, the Director Defendants breached the fiduciary duties that each of them owed to Enron and its public stockholders by expressly approving of a number of agreements that placed Enron's Chief Financial Officer in a position where he was permitted to capitalize on his knowledge of Enron's proprietary financial information for the benefit of numerous partnerships of which he served as a general partner.

54. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Mr. Fastow to act in dual capacities, defendants effectively engaged in self-dealing and placed Mr. Fastow in a position where he was capable of misappropriating Enron's confidential financial information for the purpose of enriching the partnerships he served as a general partner of, as well as furthering the financial interests of other investors in the partnerships—all to the detriment of Enron. In so doing, the Direct Defendants breached their fiduciary duties of loyalty that each of them owed to Enron and its public stockholders and caused Enron to incur losses in the amount of at least $35 million.

55. According to published reports, the general partner of the two investment partnerships was paid management fees as much as 2% annually of the total amounts invested in the partnerships. Additionally, the general partner was eligible for profit participation that could

produce tens of millions of dollars more if the partnership met its performance goals over its projected 10-year life. Inasmuch as the partnerships were formed with the intention of managing over $200 million in assets, Defendant Fastow's potential profits from managing the partnership exceeded $4 million a year.

56. Since their formation, LJM and LJM2 have engaged in billions of dollars of complex hedging transactions with Enron – in which Enron had adverse interests. By their very nature, Enron's transactions with these two investment partnerships, if successful, would result in losses to Enron.

57. Because Defendant Fastow was on both sides of the transactions between Enron and the investment partnerships, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to transactions that could have been engaged in with third parties.

58. For example, Enron entered into a series of complex transactions in 1999 involving LJM and a third-party, pursuant to which (i) Enron and the third-party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on the day of the agreement, (ii) LJM received about 6.8 million shares of Enron common stock, and (iii) Enron received a note receivable and certain financial instruments from LJM hedging an investment held by Enron.

59. During the fourth quarter of 1999, LJM2 acquired approximately $360 million of merchant assets and investments from Enron. Further, in December, 1999, LJM2 entered into agreements to acquire certain of Enron's interest and assets for about $45 million.

60. In 2000, Enron again entered into transactions with LJM, LJM2, and entities related to LJM and LJM2, to hedge certain merchant investments and other assets. Enron

contributed about $1.2 billion of assets, including notes payable and restricted shares of outstanding Enron common stock and warrants, to LJM-related entities. Additionally, Enron entered into derivative transactions with a combined amount of about $2.1 billion with LJM-related entities to hedge certain assets. These transactions put Enron at risk in amounts exceeding $1 billion.

61. In all, between June 1999 and September 2001, Enron and Enron-affiliated entities did 24 deals with LJM1 or LJM2 or both, ranging from buying and selling hard assets, purchasing debt or equity interests, and selling the rights to buy or sell shares of stock at certain preset prices.

62. In fact, the LJM2 offering document, which was prepared under the direction of Defendant Fastow, admitted that the responsibilities of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners."

63. As reported in TheStreet.com on July 12, 2001, Enron was questioned in a conference call that day about the Company's transactions with LJM and LJM2. Defendant Skilling falsely represented the true sate of affairs by representing that LJM and LJM2 had done "a couple of real minor things."

64. In July 2001, Fastow terminated his interests in the partnerships, and Enron unwound its financial relationships with the partnerships.

Additional Materially False and Misleading Statements

65. On January 18, 2000, Enron issued a press release announcing its financial results for the fourth quarter of 1999 and fiscal year 1999. The Company reported that for fiscal 1999 it

earned $957 million and had revenues of $40 billion. Defendant Lay commented on the results, stating in pertinent part as follows:

> Our strong results in both the fourth quarter and full year 1999 reflect excellent performance in all of our operating businesses. . . . In addition, Enron continues to develop innovative, high-growth new businesses that capitalized on our core skills, as demonstrated by the early success of our new broadband services businesses. Overall, a great year – one in which our shareholders received a total return of 58 percent.

66. On January 20, 2000, Enron issued a press release announcing that the Company had hosted its annual analyst conference in Houston that same day. With respect to the broadband services division, the press release stated in pertinent part as follows:

> The new name of Enron's communications business, Enron Broadband Services, reflects its role in the very fast growing market for premium broadband services. Enron is deploying an open flexible global broadband network controlled by software intelligence, which precludes the need to invest in a traditional point-to-point fiber network.

67. On April 12, 2000, Enron issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. The Company reported net income of $338 million, or $0.40 per share, and revenues of $13.1 billion. Defendant Lay highlighted the Company's broadband business, stating in pertinent part as follows:

> In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products.

The press release further described the developments in the broadband business as follows:

> Enron is replicating its unique business model and skills to deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications.
>
> During the first quarter, Enron significantly advanced its network development. New agreements have been signed with over 20 broadband distribution partners.

68. On July 24, 2000, Enron issued a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. The Company reported net income of $289 million, or $0.34 per share, and revenues of $16.9 billion for the second quarter. Defendant Lay described the results as "another excellent quarter" and highlighted that Enron Broadband Services had recently executed "an exclusive, 20-year, first-of-its-kind contract with Blockbuster to stream on-demand movies." The press release further reported that Enron Broadband Services had executed $19 million of new contracts.

69. On October 17, 2000, Enron issued a press release announcing its financial results for the third quarter of 2000, the period ending September 30, 2000. The Company reported net income of $292 million, or $0.34 per share, and revenues of $30 billion. Defendant Lay commented on the results stating in pertinent part as follows:

> Enron delivered very strong earnings growth again this quarter, further demonstrating the leading market positions in each of our major businesses . . . . We operate in some of the largest and fastest growing markets in the world and we are very optimistic about the continued strong outlook for our company.

With respect to Enron Broadband Services, the press release reported, among other things, that "Enron delivered 1,399 DS-3 months equivalents of broadband capacity, which was a 42 percent increase over the previous quarter."

70. On January 22, 2001, Enron issued a press release announcing its financial results for the fourth quarter of 2000 and fiscal year 2000, the period ending December 31, 2000. The Company reported earnings of $0.41 per share for the fourth quarter of 2000. Defendant Lay commented on the results stating in pertinent part as follows:

> Our strong results reflect breakout performances in all of our operations, ... Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of physical deliveries, contract originations and profitability. Our shareholders had another excellent

year in 2000, as Enron's stock returned 89 percent, significantly in excess of any major investment index.

With respect to Enron Broadband Services, the press release stated:

> In addition, Enron Broadband Services reported a $32 million IBIT loss. These results include costs associated with building this new business, partially offset by the monetization of a portion of Enron's broadband delivery platform.
>
> * Enron Broadband Services delivered 2,393 DS-3 month equivalents of capacity, representing a 71 percent increase over the third quarter of 2000. In addition, transaction levels also significantly increased to 236 transactions in the fourth quarter, compared to 59 transactions in the third quarter of 2000.

71. On January 30, 2001, Enron issued a press release announcing that it had priced an offering of 20-year zero coupon convertible senior debt securities, raising $1.25 billion.

72. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 30, 2001. The Company reported earnings of $0.47 per share. Defendant Skilling commented on the results, stating in pertinent part as follows:

> Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating.

With respect to Enron Broadband Services, the press release stated, among other things, as follows:

> Enron's global broadband platform is substantially complete, and 25 pooling points are operating in North America, Europe and Japan. Enron's broadband intermediation activity increased significantly, with over 580 transactions executed during the quarter – more than in all of 2000. Enron also added 70 new broadband customers this quarter for a total of 120 customers.

73. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. The Company reported diluted

earnings of $0.45 per share. Defendant Skilling downplayed any concerns investors might have about Enron Broadband Services, stating in pertinent part as follows:

> In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available.

74. On July 25, 2001, Bloomberg Business News reported that at a meeting with analysts, defendant Skilling stated that Enron will meet or beat its profit projections. The article stated in pertinent part:

> "We will hit those numbers, and we will beat those numbers," Skilling told a meeting of analysts and investors in New York . . . .
>
> Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.
>
> "All of these are bunk," Skilling said. "These are not issues for this stock."

75. On August 14, 2001, Enron issued a press release announcing that defendant Skilling had resigned his positions at the Company. This announcement surprised investors and the price of Enron common stock dropped in response. According to a report carried by Bloomberg Business News, on August 17, 2001, after the announcement of defendant Skilling's resignation, defendant Lay met with investors and analysts "to calm fears that the Company may be hiding dire financial news . . . ." The article quoted an analyst from UBS Warburg as stating: "Ken met with us to reassure us that there is nothing wrong with the company . . . . There is no other shoe to fall, and no charges to be taken."

76. Then, on August 29, 2001, defendant Lay provided an interview to Bloomberg Business News which was carried on the newswires. Defendant Lay portrayed the broadband services division in highly positive terms. The following question/answer is illustrative:

Johnson: There has been a lot of concern by investors recently over the company's broadband trading unit, which trades space on fiber optic networks. Where does Enron stand with fiber optic trading now? Have you – do you still remain hopeful in that sector? Or what's the outlook now?

Lay: Why, no, that continues to grow, quarter-to-quarter, at a very good rate, so we're continuing to develop liquidity in the marketplace. I mean, the biggest single problem has been the shortage of creditworthy counter parties to do longer term transactions. But certainly, quarter-to-quarter, we continue to increase the number of trades rather significantly.

77. The statements referenced above, were each materially false and misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and disclosure of which was necessary to make the statements made not false and/or misleading, including:

(a) that Enron Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy;

(b) that the Company's operating results were materially overstated as a result of the Company failing to timely write-down the value of its investments with LJM Cayman LP and LJM2 Co-Investment LP;

(c) that Enron was failing to write-down impaired assets on a timely basis in accordance with GAAP; and

(d) as a result of the foregoing, defendants' earnings projections and statements about the Company's prospects and outlook were lacking in a reasonable basis at all times.

The Results

78. On October 16, 2001, Enron surprised the market by announcing that the Company was taking non-recurring charges of $1.01 billion after-tax, or ($1.11) loss per diluted

share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating:

> After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses.

The press release further detailed the charge as follows: $287 million related to asset impairments recorded by Azurix Corp.; $180 million associated with the restructuring of the Company's Broadband Services division; $544 million related to losses with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

79. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, defendant Fastow. The article stated in pertinent part as follows:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

80. According to The Wall Street Journal, in a news report on October 17, 2001, the cryptic reference in the press release was to the "pair of limited partnerships that until recently were run by Enron's chief financial officer." According to The Wall Street Journal, Enron privately acknowledged (initially) that its transactions with those partnerships resulted in write-downs of $35 million.

81. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrank its shareholder equity by $1.2 billion as the Company had decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected to defendant Fastow. The article stated in pertinent part as follows:

> According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

82. Defendants did not acknowledge, however, until October 17, 2001, that the $1.2 billion writedown was attributable to Enron's transactions with Fastow's investment partnerships. On October 18, 2001, The Wall Street Journal reported that in a conference call on October 17, 2001, Defendant Lay stated that 55 million shares had been repurchased by Enron, as the Company "unwound" its participation in the transactions with the limited partnerships.

83. Defendants failed to disclose this huge reduction in assets and shareholder's equity attributable to Enron's transactions with the investment partnerships, either in the October 16, 2001 press release or on the October 16, 2001 conference call, in an apparent admission of guilt of their wrongful conduct.

84. The price of Enron common stock fell sharply on these disclosures. On October 17, 2001, the price declined approximately 5% to a closing price of $32.20 per share on volume of more than 5 million shares. On October 18, 2001, the price dropped approximately 10% to close at $29 per share with over 9 million shares trading. According to Reuters news service, "Enron Corp. stock fell sharply on [October 18] as investors digested news of a $1.2 billion

reduction in the energy giant's shareholder equity that attracted little attention when it was first disclosed earlier this week."

85. Enron's October 16, 2001 announcement and the continual "un-weaving" of Enron's business dealings prompted further concerns for investors regarding Enron's financial status. On November 6, 2001 Fitch Inc. downgraded Enron's senior unsecured debt to triple-B-minus from triple-B-plus, just a notch above junk bond or high-yield status. The prior week, Standard & Poor's Corp. lowered its credit rating on Enron to triple-B while Moody's Investors Service lowered its rating to Baa2.

86. On November 8, 2001, Enron announced it was restating its finances as far back as 1997 to account for losses related to a number of complex partnerships resulting in a $586 million reduction in net income, an additional $2.5 billion in debt and 77-cent reduction in earning per share. This news prompted John Olson, an analyst with Sanders Morris Harris to state: "At the end of the day these details give support to the fear that Enron was a financial house of cards." In trading, Enron's stock closed at $8.63 on November 9, 2001.

87. On Friday evening, November 9, 2001, Enron's rival in the energy trading business, Dynegy announced it would acquire Enron. Dynegy agreed to purchase Enron stock for an estimated $8.9 billion and assume $12.8 billion in Enron debt. Shareholders will receive 0.2685 share of Dynegy stock per Enron stock, an estimated $10.41 per Enron share.

88. As alleged herein, Defendants acted recklessly in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents which they knew were false

and misleading. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

89. Defendants' recklessness is further evidenced by the insider selling of certain of the Individual Defendants and other Enron Insiders. This trading was unusual and suspicious given its timing and amount as follows:

Defendant Lay: sold 84,714 shares from Jan. 2 to Jan 31 for $68.28 to $82 each, or more than $5.78 million; sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million.

Defendant Skilling: sold 50,000 shares from Jan. 3 to Jan. 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to $77.06, or $1.38 million. The sales total $6.41 million.

Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for $79 to $79.98 each, or more than $14.2 million. The sale brought his holdings to 223,771 shares.

Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for $69.44 to $81.31 each, or more than $12.10 million. The sale brought his holdings to 7,877 shares.

Ken Rice, chairman and chief executive of Enron Broadband Services, Inc.: sold 32,000 shares from Jan. 3 to Jan. 31 for $68.19 to $82 each, or more than $12.10 million; sold 100,000 shares on Dec. 13 to $76.69 each, or $7.67 million. The sales total $9.185 million and brought Rice's holdings to 113,127 shares.

Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan 31 for $79.84 to $80 each, or more than $6.21 million. The sale brought his holdings to 26,363 shares.

Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares January 29 for $80.51 each, or $1.02 million, and 25,000 shares Dec. 27 for $80.96 each, or $2.02 million. The sales total $4.04 million and brought his holdings to 144,217 shares.

> Richard Buy, Enron executive vice president and chief risk officer; sold 47,724 shares from Jan. 2 to Jan. 26 for $81.90 to $82 each, or $3.91 million. The sale brought his holdings to 9,257 shares.

In total, the insider selling by defendants Skilling and Lay and the other Enron insiders totals more than $73 million.

90. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

91. Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

92. As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

93. Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

94. Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

95. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price. Under these circumstances, Plaintiffs suffered injury through their purchase of Enron's securities at artificially inflated prices and a presumption of reliance applies.

V. Causes of Action

COUNT I – Common Law Fraud

96. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

97. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to induce Plaintiffs to purchase and/or retain Enron common stock at artificially inflated prices.

98. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

99. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

100. Each of the Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in Enron stock. Had the adverse facts Defendants concealed been properly disclosed, Enron's shares would not have sold at the artificially inflated prices they did.

101. As a result of the foregoing, the market price of Enron stock was artificially inflated. In ignorance of the false and misleading nature of the representations, Plaintiffs relied,

to their detriment, on the integrity of the market as to the price of Enron stock and purchased and/or retained their Enron stock.

102. Had Plaintiffs and the marketplace known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock.

103. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The decline in the price of Enron's sock was caused by the public dissemination of the true facts, which were previously concealed or hidden. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

104. The price of Enron common stock declined materially upon public disclosure of the true facts which had been misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

105. Plaintiffs further allege that because Defendants knew that the representations described above were false at the time they were made, the representations were fraudulent and malicious and constitute conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this Court.

COUNT II – Negligence of Andersen Defendants

106. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

107. The accounting firm of Arthur Andersen, L.L.P. ("AALLP") was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with state and federal securities statutes. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives. All of these actions or inactions violated general principles of accounting.

108. For instance, based on information and belief, the Defendant Fastow formed L-JM Cayman, L.P. (LJM1) and LJM2 Co. – Investment, L.P. (LJM2), private investment limited partnerships which affected the equity of shareholders such as Plaintiffs through its transactions with Enron. These transactions were not adequately reflected in the filings done or overseen by AALLP and were not reported by AALLP in accordance with standard accounting practices.

109. The financial activities of Chewco Investments, L.P. ("Chewco"), an investor in Joint Energy Development Investments Limited Partnership ("JEDI") should have been consolidated with Enron beginning in 1997. The failure to consolidate Chewco caused a false financial picture to be given to shareholders such as Plaintiffs. The Plaintiffs relied to their detriment on the financial statements prepared by AALLP in either purchasing their shares or retaining them.

110. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP beginning in 1997 causing a false financial picture to

be given of Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP and resulted in damages to Plaintiffs.

111. The financial activities of LJM1 which engaged in derivative transactions with Enron to permit Enron to hedge market risks also should have been consolidated into Enron's financial statements beginning in 1999. The failure to do so amounted to negligence on the part of AALLP and resulted in losses to Plaintiffs. Such failure by AALLP was also a violation of standard accounting practices.

112. Four SPE's known as Raptor I-IV (collectively "Raptor") were created in 2000 permitting Enron to hedge market risk in certain of its investments. Under generally accepted accounting principles, the note receivable from Raptor should have been included as a reduction to shareholders equity. The net effect of this accounting entry done by AALLP was to overstate both notes receivable and shareholders' equity by approximately $172,000,000.00.

113. These failures on the part of AALLP each constituted negligence and were a proximate cause of the precipitous drop in the value of Plaintiffs' shares in Enron. All of the above transactions and the failure of AALLP to properly record and document them constituted a violation of standard accounting practices.

COUNT III – Civil Conspiracy

114. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

115. The Defendants conspired together to commit fraud. In particular, the Defendants made certain representations to Plaintiffs regarding financial condition of Enron that they knew were not true. The Defendants filed annual and quarterly reports with the SEC which they knew had false and misleading information concerning the finances of Enron. Defendants reviewed,

certified and/or audited the financial statements of Enron indicating Enron was reaping profits which it, in fact, was not.

116. Plaintiffs relied on the Defendants statements, whether written or oral and their positions at Enron and purchased and/or retained Enron stock, unaware that the finances of the Enron were being inflated and no what had been represented, and each has suffered damages as a result. Defendants continued to make representations which were false, and which they knew were false and not in the best interest of the Plaintiffs in order to deceive the Plaintiffs and maximize their own profits. The Defendants directly benefited by way of reaping large profits by selling of their own Enron stock at artificially inflated prices and/or collecting millions of dollars in auditing and accounting fees that would not have been realized absent the misrepresentations.

WHEREFORE, Plaintiffs pray for judgment as follows:

a. Awarding Plaintiffs compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;

b. Awarding Plaintiffs exemplary damages;

c. Awarding Plaintiffs their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements; and

d. Granting such other and further relief as this Court deems to be just and proper.

FLEMING & ASSOCIATES, L.L.P.
G. Sean Jez
State Bar No. 00796829
George M. Fleming
State Bar No. 07123000
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019
Tel. No.: (713) 621-7944
Fax No.: (713) 621-9638

By _____
G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

ORIGINAL

Cause No. 2002-00569

RUBEN AND IRENE DELGADO, Plaintiff	§	IN THE DISTRICT COURT OF
	§	
ANDREW S. FASTOW, ET AL.	§	HARRIS COUNTY, TEXAS
Defendant	§	55 JUDICIAL DISTRICT

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial.

Service must be obtained promptly. Notice is hereby given that, per Harris County Local Rule 3.6, any case in which no answer has been filed or default judgment signed FOUR (4) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of action: ☐ Commercial ☐ Personal Injury ☐ Death ☑ Other

Check all claims pled:

☐ Account due	☐ Defamation	☑ Fraud	☐ Products liability
☐ Admiralty	☐ Disbarment	☐ Garnishment	☐ Post judgment
☐ Assault	☐ Discrimination	☐ Injunction/TRO	☐ Railroad
☐ Asbestosis	☐ Dram shop	☐ Insurance bad faith	☐ Real estate
☐ Auto	☐ DTPA	☐ Malicious prosecution	☐ Securities fraud
☐ Bill of review	☐ Employment discharge	☐ Malpractice/Legal	☐ Sequestration
☐ Conspiracy	☐ Expunction	☐ Malpractice/Medical	☐ Silicone implant
☐ Contract	☐ False imprisonment	☐ Name change	☐ Tortious interference
☐ Deed restriction	☐ Foreclosure	☐ Note	☐ Trespass
☐ Declaratory judgment	☐ Forfeiture	☐ Premises liability:	☐ Workers compensation

☐ Other _____

Has this dispute previously been in the Harris County courts? ☑ No ☐ Yes, in the following court: ____

Monetary damages sought ☐ less than $50,000 ☐ 50,001 - $100,000 ☑ greater than $100,000

Estimated time needed for discovery ☐ 0-3 months ☑ 4-6 months ☐ 7-12 months ☐ >1 year

Estimated time needed for trial: ☐ 1-2days ☐ 3-5 days ☑ 6-10 days ☐ > 10 days

Are you going to request Level 3 status? ☑ Yes ☐ No

If yes, please state your estimate for total hours of deposition per side: 200 and the number of interrogatories needed for each party to serve on any other party: 40

Name of party filing this cover sheet:

Signature of attorney or pro se filing cover sheet: _____

Name printed: G Sean Tez

Phone No: 713-621-7944 Bar No: 00796829

FOR COURT USE ONLY:

Track assigned ☐ Track 1 ☐ Track 2 ☐ Track 3

Court Coordinator_____ Date: _____

COURT

EXHIBIT 5

2002-00609

Cause No. _____

FILE STAMP & RETURN

MARY BAIN PEARSON and JOHN MASON, Plaintiffs, v. ANDREW S. FASTOW, KENNETH L. LAY, JEFFREY J. SKILLING, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RICHARD B. BUY, RICHARD CAUSEY, RONNIE C. CHAN, JOHN H. DUNCAN, JOE H. FOY, WENDY L. GRAMM, KEN L. HARRISON, ROBERT K. JAEDICKE, MICHAEL J. KOPPER, CHARLES A. LEMAISTRE, REBECCA MARK-JUSBASCHE, JOHN MENDELSOHN, JEROME J. MEYER, PAUL V. FERRAZ PEREIRA, FRANK SAVAGE, JOHN A. URQUHART, JOHN WAKEHAM, CHARLES E. WALKER, BRUCE WILLISON, HERBERT S. WINOKUR, JR., BEN GLISAN, KRISTINA MORDAUNT, D. STEPHEN GODDARD, JR., DAVID DUNCAN, and ARTHUR ANDERSEN, L.L.P. Defendants.	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 164 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COMES NOW Plaintiffs, Mary Bain Pearson and John Mason, and file this their Original Petition complaining of Defendants Andrew S. Fastow, Kenneth L. Lay, Jeffrey J. Skilling, Robert A. Belfer, Norman P. Blake, Jr., Richard B. Buy, Richard Causey, Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Ken L. Harrison, Robert K. Jaedicke, Michael J. Kopper, Charles A. Lemaistre, Rebecca Mark-Jusbasche, John Mendelsohn, Jerome J. Meyer, Paul V. Ferraz Pereira, Frank Savage, John A. Urquhart, John Wakeham, Charles E. Walker, Bruce Willison, Herbert S. Winokur, Jr., Ben Glisan, Kristina Mordaunt, D. Stephen Goddard,

Jr., David Duncan, and Arthur Andersen, L.L.P. In support thereof, they would show the following:

I. Discovery

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiffs, Mary Bain Pearson and John Mason, are citizens of the State of Texas who own Enron common stock.

3. Defendant **Robert A. Belfer** ("Belfer") has served as a Director of Enron since 1983, serving on its Executive Committee and Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Belfer is an individual residing in New York, New York who may be served with citation by serving him at 927 5th Ave, New York, New York 10021-2650.

4. Defendant **Norman P. Blake, Jr.** ("Blake") has served as a Director of Enron since 1993, serving on the Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Blake is an individual residing in Colorado Springs, Colorado.

5. Defendant **Richard B. Buy** ("Buy") is the Executive Vice President and Chief Risk Officer of Enron and has been Senior Vice President and Chief Risk Officer. Buy is an individual residing in Houston, Harris County, Texas who may be served with citation by serving him at 4646 S. Post Oak Lane, Houston, Texas 77056-1056.

6. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron. Causey is an individual residing in Spring, Montgomery

County, Texas who may be served with citation by serving him at 39 N. Regent Oak, Spring, Texas 77381-6442.

7. Defendant **Ronnie C. Chan** ("Chan") has been an Enron director since 1996. Chan has been Chairman of Hang Lung Group, comprising three publicly traded Hong Kong-based companies involved in property development, property investment and hotels. Mr. Chan also co-founded and is a director of various companies within Morningside/Springfield Group, which invests in and manages private companies in the manufacturing and service businesses, and engages in financial investments. Mr. Chan is also a director of Standard Chartered PLC and Motorola, Inc. Defendant Chan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

8. Defendant **John H. Duncan** ("Duncan") has been an Enron director since 1985. Duncan's principal occupation has been investments since 1990. Mr. Duncan is also a director of EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.) and Group I Automotive Inc. Defendant Duncan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

9. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer. Defendant Fastow may be served with citation at 1831 Wroxton, Houston, Texas 77005.

10. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997-1999. Foy is an individual residing in Kerrville, Kerr County, Texas who may be served with citation by serving him at 404 Highridge Drive, Kerrville, Texas 78028-6048.

11. Defendant **Wendy L. Gramm** ("Gramm") has been an Enron director since 1993. Gramm is an economist and Director of the Regulatory Studies Program of the Mercatus Center of George Mason University. From February 1988 until January 1993, Dr. Gramm served as Chairman of the Commodity Futures Trading Commission in Washington, D.C., Dr. Gramm is also a director of IBP, Inc., State Farm Insurance Co. and Invesco Funds. Dr. Gramm was also a director of the Chicago Mercantile Exchange until December 31, 1999. Defendant Gramm may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

12. Defendant **Ken L. Harrison** ("Harrison") served as a Director for Enron from 1997-2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon.

13. Defendant **Robert K. Jaedicke** ("Jaedicke") has been an Enron director since 1985. Jaedicke is Professor (Emeritus) of Accounting at the Stanford University Graduate School of Business in Stanford, California. He has been on the Stanford University faculty since 1961 and served as Dean from 1983 until 1990. Dr. Jaedicke is a director of California Water Service Company and Boise Cascade Corporation and he plans to retire from the Boise Cascade Corporation board in April 2001. Dr. Jaedicke was also a director of GenCorp, Inc. until July 2000. Defendant Jaedicke may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Defendant

Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

14. Defendant **Michael J. Kopper** ("Kopper") served as managing director of Enron's Global Equity Markets Group. Kopper is an individual residing in Spring, Montgomery County, Texas who may be served with citation by serving him at 2138 Bolsover Street, Houston, Texas 77005-1618.

15. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985. Lay has been Chairman of the Board of Enron since 1986. From 1986 until February 2001, Mr. Lay was also the Chief Executive Officer of Enron. On August 14, 2001, Lay became President and CEO of Enron upon the surprise resignation of defendant Skilling, as further described below. Mr. Lay is also a director of Eli Lilly and Company, Compaq Computer Corporation, EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.), i2 Technologies, Inc. and NewPower Holdings, Inc. Defendant Lay may be served with citation at his principal place of business, 1400 Smith Street, Houston, Texas 77002.

16. Defendant **Charles A. LeMaistre** ("LeMaistre") has been an Enron director since 1985. LeMaistre served as President of the University of Texas M.D. Anderson Cancer Center in Houston, Texas and now holds the position of President Emeritus. LeMaistre is an individual residing in San Antonio, Bexar County, Texas who may be served with citation by serving him at 7 Bristol Grn., San Antonio, Texas 78209-1846.

17. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999-2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-Jusbasche is an individual residing in Houston, Harris County, Texas.

18. Defendant **John Mendelsohn** ("Mendelsohn") has been an Enron director since 1999. Mendelsohn has served as President of the University of Texas M.D. Anderson Cancer Center. Prior to 1996, Dr. Mendelsohn was Chairman of the Department of Medicine at Memorial Sloan-Kettering Cancer in New York, Dr. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas who may be served with citation by serving him at 1417 South Blvd., Houston, Texas 77006-6333.

19. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997-2001, serving on the Finance Committee and Nominating Committee. Meyer executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Meyer is an individual residing in Wisonville, Oregon.

20. Defendant **Lou Pai** ("Pai") has been an Enron director at all times relevant to this lawsuit. Pai is also the Chairman and CEO of Enron Xcelerator and Chairman of Enron Energy Services. Pai may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to his principal place of business, 1400 Smith Street, Houston, Texas 77002.

21. Defendant **Paul V. Ferraz Pereira** ("Pereira") has been an Enron director since 1999. Pereira is Executive Vice President of Group Bozano. Mr. Pereira served for over five years as President and Chief Operating Officer of Meridional Financial Group and Managing Director of Group Bozano. Mr. Pereira is also the former President and Chief Executive Officer of the State Bank of Rio de Janeiro. Defendant Pereira may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

22. Defendant **Frank Savage** ("Savage") has been an Enron director since 1999. Savage has served as Chairman of Alliance Capital Management International (a division of Alliance Capital Management, L.P.). Mr. Savage is also a director of Lockheed Martin Corporation, Alliance Capital Management L.P. and Qualcomm Corp. Savage is an individual residing in Stamford, Connecticut who may be served with citation by serving him at 87 Ridgecrest Road, Stamford, Connecticut 06903-3120.

23. Defendant **Jeffrey K. Skilling** ("Skilling") has been an Enron director at all times relevant to this lawsuit. Mr. Skilling served as President and Chief Executive Officer of Enron from February 2001 through August 14, 2001, when he announced his unexpected resignation from the offices of both President and CEO. It was also announced on that date that Skilling would remain on the Board of Directors, and that he would serve as a consultant to the Company through the year 2005. Mr. Skilling served as President and Chief Operating Officer of Enron from January 1997 through February 2001. From August 1990 until December 1996, he served as Chairman and Chief Executive Officer of Enron North America Corp. and its predecessor companies. Mr. Skilling is also a director of the Houston Branch of the Federal Reserve Bank of Dallas. Defendant Skilling may be served with citation at 10 Briarwood Court, Houston, Texas 77019-5802.

24. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990-2001, serving on the Finance Committee. Urquhart executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Urquhart is an individual residing in Fairfield, Connecticut who may be served with citation by serving him at 7 Sasco Pt. Fairfield, Connecticut 06430.

25. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995-1998, serving on the Finance Committee and Nominating Committee, including as

Chairman. Walker executed the 1997 and 1998 financial statements of Enron. Walker is an individual residing in Potomac, Maryland who may be served with citation by serving him at 10120 Chapel Road, Potomac, Maryland 20854-4143.

26. Defendant **John Wakeham** ("Wakeham") has been an Enron director since 1994. Wakeham is a retired former U.K. Secretary of State for Energy and Leader of the Houses of Commons and Lords. He served as a Member of Parliament from 1974 until his retirement from the House of Commons in April 1992. Prior to his government service, Lord Wakeham managed a large private practice as a chartered accountant. He is currently Chairman of the Press Complaints Commission in the U.K. and chairman of director of a number of publicly tradeu U.K. companies. Defendant Wakeham may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

27. Defendant **Bruce G. Willison** ("Willison") served as a member of the Audit Committee in 1997. Willison is individual residing in Los Angeles, California who may be served with citation by serving him at 162 S. Burlingame Ave, Los Angeles, California 90049-2642.

28. Defendant **Herbert S. Winokur** ("Winokur") has been an Enron director since 1985. Winokur is Chairman and Chief Executive Officer of Capricorn Holdings, Inc. (a private investment company) and Managing General Partner of Capricorn Investors, L.P., Capricorn Investors II, L.P. and Capricorn Investors III, L.P., partnerships concentrating on investments in restructure situations, organized by Mr. Winokur in 1987, 1994 and 1999, respectively. From August 2000 until March 2001, Mr. Winokur served as Non-executive Chairman of Azurix Corp.

Prior to his current appointment, Mr. Winokur was Senior Executive Vice President and a director of Penn Central Corporation. He is also a director of NATCO Group, Inc., Mrs. Fields' Holding Company, Inc., CCC Information Services Group, Inc. and DynCorp. Winokur is an individual residing in Greenwich, Connecticut who may be served with citation by serving him at 341 North Street, Greenwich, Connecticut 06830-3901.

29. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001. Defendant Glisan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to 15322 Baybrook Drive, Houston, Texas 77062. This Defendant was discharged for self-dealing the week of November 5, 2001.

30. Defendant **Kristina Mordaunt** ("Mordaunt") was a managing director and general counsel of Enron Broadband Services until November of 2001. Defendant Mourdaunt may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to her home address of 4531 West Alabama, Houston, Texas 77027-4803. This Defendant was discharged for self-dealing the week of November 5, 2001.

31. Defendant **D. Stephen Goddard, Jr.** ("Goddard") is the office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. that conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Goddard is an individual residing in Houston, Harris County, Texas who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

32. Defendant **David Duncan** ("Duncan") is a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Duncan is an individual residing in Houston, Harris County, Texas who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

33. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a limited liability partnership, whose business address is 901 Main Street, Suite 5600, Dallas, Texas 75202. Defendant Arthur Andersen may be served with process by mailing its registered agent, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to P. Scott Ozanus, 901 Main Street, Suite 5600, Dallas, Texas 75202. Arthur Anderson was the independent and an internal auditor for Enron during the relevant portions complained of herein.

34. Collectively, the Defendants identified in paragraphs 3-30 are referred to as the "Enron Defendants." The Enron Defendants, through their positions as directors and/or senior officers of Enron, had responsibility for the management of Enron's business and operations.

35. Collectively, the Defendants identified in paragraphs 31-33 are referred to as the "Andersen Defendants."

36. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in Enron's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers of Enron, by virtue of their high-level positions with Enron, directly participated in the

management of Enron, was directly involved in the day-to-day operations of Enron at the highest levels and was privy to confidential proprietary information concerning Enron and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding Enron, and approved or ratified these statements.

37. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to Enron's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of Enron's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions violated these specific requirements and obligations.

38. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Individual Defendants had access to the adverse undisclosed information about Enron's

business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by Enron materially false and misleading.

39. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Enron, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to Enron. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein, and is therefore primarily liable for the representations contained therein.

40. Defendant AALLP was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with state and federal securities statutes. Defendant AALLP's relationship with Enron included being paid to provide both outside audits of Enron's financial statements as well as internal audits, a clear conflict of interest. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives.

41. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on Plaintiffs by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the

Plaintiffs and the investing public regarding Enron's business, its finances and the intrinsic value of Enron's common stock; and (ii) caused Plaintiffs to purchase Enron's common stock at artificially inflated prices and/or continue their ownership of Enron stock in their private investing devices, their 401k plans, their ESOP plans and/or their AESOP plans.

III. Jurisdiction and Venue

42. This Court has jurisdiction over each Defendant because each Defendant is doing business in Harris County, Texas, has committed a tort in whole or in part in Harris County, Texas and/or resides in Harris County. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

43. Venue is proper in Harris County, Texas. Specifically, venue is proper in Harris County, Texas because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Venue is also proper in Harris County, Texas because it is the county of some of the Defendants' residence at the time the cause of action accrued and the county in which the majority of the work on the audits was done.

IV. Just the Facts

44. In 1999, Defendant Fastow formed two investment partnerships, LJM Cayman LP ("LJM") and LJM2 Co-Investment LP ("LJM2"). LJM and LJM2 are private investment companies that, according to Enron's public filings, engage in acquiring and/or investing in primarily energy-related investments. Fastow was the managing member of the general partner of each of the two partnerships.

45. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2")

partnership said that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices."

46. Incredibly, the document reportedly goes so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and its stockholders to whom he and the Director Defendants owned a fiduciary duty and states that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices and that *Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow] wealth."* (Emphasis added).

47. Defendants clearly breached their duties by expressly approving the agreement with Mr. Fastow which created a situation of irreconcilable conflict and placed Enron's CFO in the middle of that conflict by putting Fastow, who is responsible for overseeing the financial interests of the company, in charge of partnerships that routinely purchased assets from Enron and was involved in self dealing.

48. Remarkably, Defendant Lay reportedly denied the existence of any conflict of interest arising out of the LJM arrangement. Such related-party transactions, involving top managers or directors, aren't unusual, he said. "Almost all big companies have related-party transactions."

49. Enron has publicly stated that the partnership deals were aimed to help it hedge against fluctuating values for its growing portfolio of assets. In the past decade, Enron has seen its asset base rocket to more than $100 billion. As a result of this rapid growth, Enron has at

times been strapped for capital and has sought ways to bring in outside investors to help bolster its balance sheet.

50. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection with a $30 million LJM2 investment in a project known as "Raptor III" in September 2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2 approached Enron to settle the investment early, causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit." The information quoted came from an internal report produced by defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside information to recap illicit insider trading profits, in the millions of dollars in this transaction alone.

51. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The Company's cover up of the Fastow agreement and other related transactions has subjected Enron to strong criticism from investors and analysts alike.

52. On October 23, 2001, the Associated Press reported that various partnership transactions purportedly resulted in a gain of $16 million (pretax) in 1999, and a loss of $36 million in 2000. The same article quoted a top analyst as sharply criticizing Enron's concealment of the partnership deals. "What you are hearing from many is that the company's credibility is being questioned and there is a need for disclosure," said David Fleischer of Goldman, Sachs & Co. "That is exactly what I think needs to happen. There is an appearance that you are hiding something. . . I for one find the disclosure is not complete enough for me to understand." To add fuel to the fire, the Company also acknowledged that the SEC had begun an investigation into Enron's accounting practices with regard to the partnerships.

53. On the basis of the foregoing, the Director Defendants breached the fiduciary duties that each of them owed to Enron and its public stockholders by expressly approving of a number of agreements that placed Enron's Chief Financial Officer in a position where he was permitted to capitalize on his knowledge of Enron's proprietary financial information for the benefit of numerous partnerships of which he served as a general partner.

54. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Mr. Fastow to act in dual capacities, defendants effectively engaged in self-dealing and placed Mr. Fastow in a position where he was capable of misappropriating Enron's confidential financial information for the purpose of enriching the partnerships he served as a general partner of, as well as furthering the financial interests of other investors in the partnerships—all to the detriment of Enron. In so doing, the Direct Defendants breached their fiduciary duties of loyalty that each of them owed to Enron and its public stockholders and caused Enron to incur losses in the amount of at least $35 million.

55. According to published reports, the general partner of the two investment partnerships was paid management fees as much as 2% annually of the total amounts invested in the partnerships. Additionally, the general partner was eligible for profit participation that could produce tens of millions of dollars more if the partnership met its performance goals over its projected 10-year life. Inasmuch as the partnerships were formed with the intention of managing over $200 million in assets, Defendant Fastow's potential profits from managing the partnership exceeded $4 million a year.

56. Since their formation, LJM and LJM2 have engaged in billions of dollars of complex hedging transactions with Enron – in which Enron had adverse interests. By their very nature, Enron's transactions with these two investment partnerships, if successful, would result in losses to Enron.

57. Because Defendant Fastow was on both sides of the transactions between Enron and the investment partnerships, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to transactions that could have been engaged in with third parties.

58. For example, Enron entered into a series of complex transactions in 1999 involving LJM and a third-party, pursuant to which (i) Enron and the third-party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on the day of the agreement, (ii) LJM received about 6.8 million shares of Enron common stock, and (iii) Enron received a note receivable and certain financial instruments from LJM hedging an investment held by Enron.

59. During the fourth quarter of 1999, LJM2 acquired approximately $360 million of merchant assets and investments from Enron. Further, in December, 1999, LJM2 entered into agreements to acquire certain of Enron's interest and assets for about $45 million.

60. In 2000, Enron again entered into transactions with LJM, LJM2, and entities related to LJM and LJM2, to hedge certain merchant investments and other assets. Enron contributed about $1.2 billion of assets, including notes payable and restricted shares of outstanding Enron common stock and warrants, to LJM-related entities. Additionally, Enron entered into derivative transactions with a combined amount of about $2.1 billion with LJM-related entities to hedge certain assets. These transactions put Enron at risk in amounts exceeding $1 billion.

61. In all, between June 1999 and September 2001, Enron and Enron-affiliated entities did 24 deals with LJM1 or LJM2 or both, ranging from buying and selling hard assets, purchasing debt or equity interests, and selling the rights to buy or sell shares of stock at certain preset prices.

62. In fact, the LJM2 offering document, which was prepared under the direction of Defendant Fastow, admitted that the responsibilities of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners."

63. As reported in TheStreet.com on July 12, 2001, Enron was questioned in a conference call that day about the Company's transactions with LJM and LJM2. Defendant Skilling falsely represented the true sate of affairs by representing that LJM and LJM2 had done "a couple of real minor things."

64. In July 2001, Fastow terminated his interests in the partnerships, and Enron unwound its financial relationships with the partnerships.

Additional Materially False and Misleading Statements

65. On January 18, 2000, Enron issued a press release announcing its financial results for the fourth quarter of 1999 and fiscal year 1999. The Company reported that for fiscal 1999 it earned $957 million and had revenues of $40 billion. Defendant Lay commented on the results, stating in pertinent part as follows:

> Our strong results in both the fourth quarter and full year 1999 reflect excellent performance in all of our operating businesses. . . . In addition, Enron continues to develop innovative, high-growth new businesses that capitalized on our core skills, as demonstrated by the early success of our new broadband services businesses. Overall, a great year – one in which our shareholders received a total return of 58 percent.

66. On January 20, 2000, Enron issued a press release announcing that the Company had hosted its annual analyst conference in Houston that same day. With respect to the broadband services division, the press release stated in pertinent part as follows:

> The new name of Enron's communications business, Enron Broadband Services, reflects its role in the very fast growing market for premium broadband services. Enron is deploying an open flexible global broadband network controlled by software intelligence, which precludes the need to invest in a traditional point-to-point fiber network.

67. On April 12, 2000, Enron issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. The Company reported net income of $338 million, or $0.40 per share, and revenues of $13.1 billion. Defendant Lay highlighted the Company's broadband business, stating in pertinent part as follows:

> In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products.

The press release further described the developments in the broadband business as follows:

> Enron is replicating its unique business model and skills to deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications.
>
> During the first quarter, Enron significantly advanced its network development. New agreements have been signed with over 20 broadband distribution partners.

68. On July 24, 2000, Enron issued a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. The Company reported net income of $289 million, or $0.34 per share, and revenues of $16.9 billion for the second quarter. Defendant Lay described the results as "another excellent quarter" and highlighted that Enron Broadband Services had recently executed "an exclusive, 20-year, first-of-its-kind contract with Blockbuster to stream on-demand movies." The press release further reported that Enron Broadband Services had executed 319 million of new contracts.

69. On October 17, 2000, Enron issued a press release announcing its financial results for the third quarter of 2000, the period ending September 30, 2000. The Company reported net income of $292 million, or $0.34 per share, and revenues of $30 billion. Defendant Lay commented on the results stating in pertinent part as follows:

> Enron delivered very strong earnings growth again this quarter, further demonstrating the leading market positions in each of our major businesses . . . . We operate in some of the largest and fastest growing markets in the world and we are very optimistic about the continued strong outlook for our company.

With respect to Enron Broadband Services, the press release reported, among other things, that "Enron delivered 1,399 DS-3 months equivalents of broadband capacity, which was a 42 percent increase over the previous quarter."

70. On January 22, 2001, Enron issued a press release announcing its financial results for the fourth quarter of 2000 and fiscal year 2000, the period ending December 31, 2000. The

Company reported earnings of $0.41 per share for the fourth quarter of 2000. Defendant Lay commented on the results stating in pertinent part as follows:

> Our strong results reflect breakout performances in all of our operations, ... Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of physical deliveries, contract originations and profitability. Our shareholders had another excellent year in 2000, as Enron's stock returned 89 percent, significantly in excess of any major investment index.

With respect to Enron Broadband Services, the press release stated:

> In addition, Enron Broadband Services reported a $32 million IBIT loss. These results include costs associated with building this new business, partially offset by the monetization of a portion of Enron's broadband delivery platform.
>
> * Enron Broadband Services delivered 2,393 DS-3 month equivalents of capacity, representing a 71 percent increase over the third quarter of 2000. In addition, transaction levels also significantly increased to 236 transactions in the fourth quarter, compared to 59 transactions in the third quarter of 2000.

71. On January 30, 2001, Enron issued a press release announcing that it had priced an offering of 20-year zero coupon convertible senior debt securities, raising $1.25 billion.

72. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 30, 2001. The Company reported earnings of $0.47 per share. Defendant Skilling commented on the results, stating in pertinent part as follows:

> Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating.

With respect to Enron Broadband Services, the press release stated, among other things, as follows:

> Enron's global broadband platform is substantially complete, and 25 pooling points are operating in North America, Europe and Japan. Enron's broadband

> intermediation activity increased significantly, with over 580 transactions executed during the quarter – more than in all of 2000. Enron also added 70 new broadband customers this quarter for a total of 120 customers.

73. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. The Company reported diluted earnings of $0.45 per share. Defendant Skilling downplayed any concerns investors might have about Enron Broadband Services. stating in pertinent part as follows:

> In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available.

74. On July 25, 2001, Bloomberg Business News reported that at a meeting with analysts, defendant Skilling stated that Enron will meet or beat its profit projections. The article stated in pertinent part:

> "We will hit those numbers, and we will beat those numbers," Skilling told a meeting of analysts and investors in New York . . . .
>
> Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.
>
> "All of these are bunk," Skilling said. "These are not issues for this stock."

75. On August 14, 2001, Enron issued a press release announcing that defendant Skilling had resigned his positions at the Company. This announcement surprised investors and the price of Enron common stock dropped in response. According to a report carried by Bloomberg Business News, on August 17, 2001, after the announcement of defendant Skilling's resignation, defendant Lay met with investors and analysts "to calm fears that the Company may be hiding dire financial news . . . ." The article quoted an analyst from UBS Warburg as stating:

"Ken met with us to reassure us that there is nothing wrong with the company . . . . There is no other shoe to fall, and no charges to be taken."

76. Then, on August 29, 2001, defendant Lay provided an interview to Bloomberg Business News which was carried on the newswires. Defendant Lay portrayed the broadband services division in highly positive terms. The following question/answer is illustrative:

> Johnson: There has been a lot of concern by investors recently over the company's broadband trading unit, which trades space on fiber optic networks. Where does Enron stand with fiber optic trading now? Have you – do you still remain hopeful in that sector? Or what's the outlook now?
>
> Lay: Why, no, that continues to grow, quarter-to-quarter, at a very good rate, so we're continuing to develop liquidity in the marketplace. I mean, the biggest single problem has been the shortage of creditworthy counter parties to do longer term transactions. But certainly, quarter to quarter, we continue to increase the number of trades rather significantly.

77. The statements referenced above, were each materially false and misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and disclosure of which was necessary to make the statements made not false and/or misleading, including:

(a) that Enron Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy;

(b) that the Company's operating results were materially overstated as a result of the Company failing to timely write-down the value of its investments with LJM Cayman LP and LJM2 Co-Investment LP;

(c) that Enron was failing to write-down impaired assets on a timely basis in accordance with GAAP; and

(d) as a result of the foregoing, defendants' earnings projections and statements about the Company's prospects and outlook were lacking in a reasonable basis at all times.

The Results

78. On October 16, 2001, Enron surprised the market by announcing that the Company was taking non-recurring charges of $1.01 billion after-tax, or ($1.11) loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating:

> After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses.

The press release further detailed the charge as follows: $287 million related to asset impairments recorded by Azurix Corp.; $180 million associated with the restructuring of the Company's Broadband Services division; $544 million related to losses with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

79. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, defendant Fastow. The article stated in pertinent part as follows:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

80. According to The Wall Street Journal, in a news report on October 17, 2001, the cryptic reference in the press release was to the "pair of limited partnerships that until recently were run by Enron's chief financial officer." According to The Wall Street Journal, Enron privately acknowledged (initially) that its transactions with those partnerships resulted in write-downs of $35 million.

81. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrank its shareholder equity by $1.2 billion as the Company had decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected to defendant Fastow. The article stated in pertinent part as follows:

> According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

82. Defendants did not acknowledge, however, until October 17, 2001, that the $1.2 billion writedown was attributable to Enron's transactions with Fastow's investment partnerships. On October 18, 2001, The Wall Street Journal reported that in a conference call on October 17, 2001, Defendant Lay stated that 55 million shares had been repurchased by Enron, as the Company "unwound" its participation in the transactions with the limited partnerships.

83. Defendants failed to disclose this huge reduction in assets and shareholder's equity attributable to Enron's transactions with the investment partnerships, either in the October

16, 2001 press release or on the October 16, 2001 conference call, in an apparent admission of guilt of their wrongful conduct.

84. The price of Enron common stock fell sharply on these disclosures. On October 17, 2001, the price declined approximately 5% to a closing price of $32.20 per share on volume of more than 5 million shares. On October 18, 2001, the price dropped approximately 10% to close at $29 per share with over 9 million shares trading. According to Reuters news service, "Enron Corp. stock fell sharply on [October 18] as investors digested news of a $1.2 billion reduction in the energy giant's shareholder equity that attracted little attention when it was first disclosed earlier this week."

85. Enron's October 16, 2001 announcement and the continual "un-weaving" of Enron's business dealings prompted further concerns for investors regarding Enron's financial status. On November 6, 2001 Fitch Inc. downgraded Enron's senior unsecured debt to triple-B-minus from triple-B-plus, just a notch above junk bond or high-yield status. The prior week, Standard & Poor's Corp. lowered its credit rating on Enron to triple-B while Moody's Investors Service lowered its rating to Baa2.

86. On November 8, 2001, Enron announced it was restating its finances as far back as 1997 to account for losses related to a number of complex partnerships resulting in a $586 million reduction in net income, an additional $2.5 billion in debt and 77-cent reduction in earning per share. This news prompted John Olson, an analyst with Sanders Morris Harris to state: "At the end of the day these details give support to the fear that Enron was a financial house of cards." In trading, Enron's stock closed at $8.63 on November 9, 2001.

87. On Friday evening, November 9, 2001, Enron's rival in the energy trading business, Dynegy announced it would acquire Enron. Dynegy agreed to purchase Enron stock

for an estimated $8.9 billion and assume $12.8 billion in Enron debt. Shareholders will receive 0.2685 share of Dynegy stock per Enron stock, an estimated $10.41 per Enron share.

88. As alleged herein, Defendants acted recklessly in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents which they knew were false and misleading. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

89. Defendants' recklessness is further evidenced by the insider selling of certain of the Individual Defendants and other Enron Insiders. This trading was unusual and suspicious given its timing and amount as follows:

> Defendant Lay: sold 84,714 shares from Jan. 2 to Jan 31 for $68.28 to $82 each, or more than $5.78 million; sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million.
>
> Defendant Skilling: sold 50,000 shares from Jan. 3 to Jan. 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to $77.06, or $1.38 million. The sales total $6.41 million.
>
> Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for $79 to $79.98 each, or more than $ . .2 million. The sale brought his holdings to 223,771 shares.
>
> Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for $69.44 to $81.31 each, or more than $12.10 million. The sale brought his holdings to 7,877 shares.

Ken Rice, chairman and chief executive of Enron Broadband Services, Inc.: sold 32,000 shares from Jan. 3 to Jan. 31 for $68.19 to $82 each, or more than $12.10 million; sold 100,000 shares on Dec. 13 to $76.69 each, or $7.67 million. The sales total $9.185 million and brought Rice's holdings to 113,127 shares.

Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan 31 for $79.84 to $80 each, or more than $6.21 million. The sale brought his holdings to 26,363 shares.

Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares January 29 for $80.51 each, or $1.02 million, and 25,000 shares Dec. 27 for $80.96 each, or $2.02 million. The sales total $4.04 million and brought his holdings to 144,217 shares.

Richard Buy, Enron executive vice president and chief risk officer; sold 47,724 shares from Jan. 2 to Jan. 26 for $81.90 to $82 each, or $3.91 million. The sale brought his holdings to 9,257 shares.

In total, the insider selling by defendants Skilling and Lay and the other Enron insiders totals more than $73 million.

90. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

91. Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

92. As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

93. Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

94. Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their

respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

95. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price. Under these circumstances, Plaintiffs suffered injury through their purchase of Enron's securities at artificially inflated prices and a presumption of reliance applies.

V. Causes of Action

COUNT I – Fraud

96. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

97. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to induce Plaintiffs to purchase and/or retain Enron common stock at artificially inflated prices.

98. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

99. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

100. Each of the Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in Enron stock. Had the adverse facts Defendants concealed been properly disclosed, Enron's shares would not have sold at the artificially inflated prices they did.

101. As a result of the foregoing, the market price of Enron stock was artificially inflated. In ignorance of the false and misleading nature of the representations, Plaintiffs relied, to their detriment, on the integrity of the market as to the price of Enron stock and purchased and/or retained their Enron stock.

102. Had Plaintiffs and the marketplace known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock.

103. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The decline in the price of Enron's sock was caused by the public dissemination of the true facts, which were previously concealed or hidden. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

104. The price of Enron common stock declined materially upon public disclosure of the true facts which had been misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

105. Plaintiffs further allege that because Defendants knew that the representations described above were false at the time they were made, the representations were fraudulent and malicious and constitute conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this Court.

COUNT II – Negligence of Andersen Defendants

106. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

107. The accounting firm of Arthur Andersen, L.L.P. ("AALLP") was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with state and federal securities statutes. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives. All of these actions or inactions violated general principles of accounting.

108. For instance, based on information and belief, the Defendant Fastow formed L-JM Cayman, L.P. (LJM1) and LJM2 Co. – Investment, L.P. (LJM2), private investment limited partnerships which affected the equity of shareholders such as Plaintiffs through its transactions

with Enron. These transactions were not adequately reflected in the filings done or overseen by AALLP and were not reported by AALLP in accordance with standard accounting practices.

109. The financial activities of Chewco Investments, L.P. ("Chewco"), an investor in Joint Energy Development Investments Limited Partnership ("JEDI") should have been consolidated with Enron beginning in 1997. The failure to consolidate Chewco caused a false financial picture to be given to shareholders such as Plaintiffs. The Plaintiffs relied to their detriment on the financial statements prepared by AALLP in either purchasing their shares or retaining them.

110. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP beginning in 1997 causing a false financial picture to be given of Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP and resulted in damages to Plaintiffs.

111. The financial activities of LJM1 which engaged in derivative transactions with Enron to permit Enron to hedge market risks also should have been consolidated into Enron's financial statements beginning in 1999. The failure to do so amounted to negligence on the part of AALLP and resulted in losses to Plaintiffs. Such failure by AALLP was also a violation of standard accounting practices.

112. Four SPE's known as Raptor I-IV (collectively "Raptor") were created in 2000 permitting Enron to hedge market risk in certain of its investments. Under generally accepted accounting principles, the note receivable from Raptor should have been included as a reduction to shareholders equity. The net effect of this accounting entry done by AALLP was to overstate both notes receivable and shareholders' equity by approximately $172,000,000.00.

113. These failures on the part of AALLP each constituted negligence and were a proximate cause of the precipitous drop in the value of Plaintiffs' shares in Enron. All of the above transactions and the failure of AALLP to properly record and document them constituted a violation of standard accounting practices.

COUNT III – Civil Conspiracy

114. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

115. The Defendants conspired together to commit fraud. In particular, the Defendants made certain representations to Plaintiffs regarding financial condition of Enron that they knew were not true. The Defendants filed annual and quarterly reports with the SEC which they knew had false and misleading information concerning the finances of Enron and which were done illegally or through illegal means. Defendants reviewed, certified and/or audited the financial statements of Enron indicating Enron was reaping profits greater than the actual profits that would have been shown had the reports been done in a legally required manner following generally accepted accounting practices.

116. Plaintiffs relied on the Defendants statements, whether written or oral, and their positions at Enron and purchased and/or retained Enron stock, unaware that the finances of the Enron were being inflated and no what had been represented, and each has suffered damages as a result. Defendants continued to make representations which were false, and which they knew were false and not in the best interest of the Plaintiffs in order to deceive the Plaintiffs and maximize their own profits. The Defendants directly benefited by way of reaping large profits by selling of their own Enron stock at artificially inflated price. and/or collecting millions of dollars in auditing and accounting fees that would not have been realized absent the misrepresentations.

WHEREFORE, Plaintiffs pray for judgment as follows:

a. Awarding Plaintiffs compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;

b. Awarding Plaintiffs exemplary damages;

c. Awarding Plaintiffs their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements; and

d. Granting such other and further relief as this Court deems to be just and proper.

FLEMING & ASSOCIATES, L.L.P.
G. Sean Jez
State Bar No. 00796829
George M. Fleming
State Bar No. 07123000
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019
Tel. No.: (713) 621-7944
Fax No.: (713) 621-9638

By _____
G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

2002-0060

FILE STAMP & RETURN

Cause No. ____________

MARY BAIN PEARSON AND JOHN MASON Plaintiff	§	IN THE DISTRICT COURT OF
	§	
	§	HARRIS COUNTY, TEXAS
ANDREW S. FASTOW, ET AL. Defendant	§	164 JUDICIAL DISTRICT

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. <u>This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial.</u>

Service must be obtained promptly. Notice is hereby given that, per Harris County Local Rule 3.6, any case in which no answer has been filed or default judgment signed FOUR (4) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of action: ☐ Commercial ☐ Personal Injury ☐ Death ☒ Other

Check all claims pled:

☐ Account due	☐ Defamation	☒ Fraud	☐ Products liability
☐ Admiralty	☐ Disbarment	☐ Garnishment	☐ Post judgment
☐ Assault	☐ Discrimination	☐ Injunction/TRO	☐ Railroad
☐ Asbestosis	☐ Dram shop	☐ Insurance bad faith	☐ Real estate
☐ Auto	☐ DTPA	☐ Malicious prosecution	☐ Securities fraud
☐ Bill of review	☐ Employment discharge	☐ Malpractice/Legal	☐ Sequestration
☐ Conspiracy	☐ Expunction	☐ Malpractice/Medical	☐ Silicone implant
☐ Contract	☐ False imprisonment	☐ Name change	☐ Tortious interference
☐ Deed restriction	☐ Foreclosure	☐ Note	☐ Trespass
☐ Declaratory judgment	☐ Forfeiture	☐ Premises liability:	☐ Workers compensation

☐ Other ____________

Has this dispute previously been in the Harris County courts? ☒ No ☐ Yes, in the following court: ____

Monetary damages sought ☐ less than $50,000 ☐ 50,001 - $100,000 ☒ greater than $100,000

Estimated time needed for discovery ☐ 0-3 months ☒ 4-6 months ☐ 7-12 months ☐ >1 year

Estimated time needed for trial: ☐ 1-2days ☐ 3-5 days ☒ 6-10 days ☐ > 10 days

Are you going to request Level 3 status? ☒ Yes ☐ No

If yes, please state your estimate for total hours of deposition per side: 200 and the number of interrogatories needed for each party to serve on any other party: 40.

Name of party filing this cover sheet:

Signature of attorney or pro se filing cover sheet [signature]

Name printed: G. Sean Jez

Phone No: 713-651-7544 Bar No: 00796829

FOR COURT USE ONLY:

Track assigned ☐ Track 1 ☐ Track 2 ☐ Track 3

Court Coordinator ____________ Date: ____________